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THE COMPANIES (CONSOLIDATION) ACT, 1908.

THE
COMPANIES (CONSOLIDATION) ACT
1908

WITH A GENERAL SURVEY OF EARLIER ENACTMENTS
NOTES ON THE ACT,
AND
A COMPARATIVE TABLE
OF THE OLD AND NEW ACTS

BY

FRANK EVANS

OF LINCOLN'S INN, BARRISTER-AT-LAW

AND

HUMPHREY H. KING, B.A., LL.B.

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

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PREFACE.

THIS volume, while not pretending to be in any sense a treatise on the vast subject of English Company Law, or even a comprehensive survey of its leading features, yet seeks to serve a useful purpose by enabling practising lawyers and others, for whose profit or protection such knowledge is necessary, to gain a comprehensive view of the effect of the new Act, and by guiding them through its nearly three hundred sections.

Part I. is designed to epitomise the later history of company legislation down to the passing of the consolidating statute of last year, so as to render the object of some of the provisions of that Act more intelligible. The Consolidating Act (8 Edw. 7, c. 69) is set out at length in Part II., notes being appended throughout to indicate the origin and apparent purpose and effect of the various provisions, and it is hoped that the Comparative Table which follows, in Part III., will assist those whose knowledge is based on a familiarity with the earlier enactments, and who desire to be directed to the section of the new Act replacing any particular provision of a repealed statute.

In order to avoid overloading a small book with

the thousands of decisions on the old Acts, references have been made to a well-known book (Rawlins and Macnaghten on Companies) which contains the case law down to 1901. All the important decisions since that date have been specifically mentioned.

The Consolidation Act comes into operation on April 1, 1909 (see s. 296), and in the main it is, as it purports to be, a mere consolidation of previous enactments. The language of the previous Acts has, however, not been strictly adhered to, but the alterations are for the most part such as are inevitable in the process of consolidation, or rendered necessary for the removal of ambiguities or inconsistencies.

So many statutory duties with reference to companies are now imposed on their officers, who in case of neglect may incur serious penalties, that it is absolutely necessary for secretaries, directors, and others to obtain as early as possible a familiarity with the details of the statute by which their conduct will in future be regulated.

FRANK EVANS.
HUMPHREY H. KING.

5, New Square,
Lincoln's Inn,
February 16, 1909.

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THE COMPANIES (CONSOLIDATION) ACT, 1908.

PART I.

GENERAL SURVEY OF EARLIER ENACTMENTS.

The Companies (Consolidation) Act, 1908, being, as its title implies, "An Act to Consolidate the Companies Act, 1862, and the Acts amending it," a short survey of the consolidated enactments forms a fitting preliminary to a consideration of the new Act itself. The principle of a joint-stock company resembles other principles of English law in that it was gradually evolved out of a mediæval institution by a slow process. This development is a subject of both historical and legal interest; and the circumstances whereby the old Guild Merchant and Craft Guilds of the thirteenth and fourteenth centuries were in turn replaced by corporations incorporated under prerogative charters (such as the East India Company), companies created by Royal Charter in pursuance of special statutory authority (such as the Bank of England), companies incorporated directly by special Act of Parliament (to simplify which the Companies Clauses Consolidation Act, 1845 (*a*), was passed), unregistered and non-corporate joint-stock companies (including the famous "Bubble" companies), *quasi*-corporations formed under statutes of

(*a*) 8 & 9 Vict. c. 6.

1826 (*b*), 1834 (*c*), and 1837 (*d*), and banking corporations under an Act of 1844 (*e*) form a fascinating study; but one which, essential though it is to a proper understanding of English company law as a whole, does not bear directly on the present consolidation and is not within the scope of such a volume as this.

It is necessary, however, to consider quite shortly the Acts, preceding that of 1862, by virtue of which companies were incorporated without the assistance of any exercise of the Royal prerogative; these Acts being in fact the origin of the modern corporate company as it exists to-day, apart from those few companies which represent anachronistic survivals of the earlier legislation.

Joint-Stock Companies Act, 1844.

On September 5th, 1844, there was passed "An Act for the Registration, Incorporation, and Regulation of Joint-Stock Companies" (*f*). It applied to every joint-stock company (as thereinafter defined) established in England or Ireland, or established in Scotland and having an office or place of business in any part of the United Kingdom, "for any commercial purpose, or for any purpose of profit, or for the purpose of assurance or insurance (except banking companies, schools, and scientific and literary institutions, and also friendly societies, loan societies, and benefit building societies, respectively duly certified and enrolled under the statutes in force respecting such societies, other than such friendly societies as grant assurances on lives to the extent hereinafter specified)."

Section 2 provided that the term "Joint-Stock

(*b*) 7 Geo. 4, c. 46.
(*c*) 4 & 5 Will. 4, c. 94.
(*d*) 7 Will. 4 and 1 Vict. c. 73.
(*e*) 7 & 8 Vict. c. 113
(*f*) 7 & 8 Vict. c. 110, repealed by the Joint-Stock Companies Act, 1856 (19 & 20 Vict. c. 47), s. 107.

Company" should "comprehend" "every partnership whereof the capital is divided or agreed to be divided into shares, and so as to be transferable without the express consent of all the co-partners," and also assurance companies (as therein defined) including certain insuring friendly societies, whether the same should "be joint-stock companies or mutual assurance societies or both," and "every partnership which at its formation, or by subsequent admission (except any admission subsequent on devolution or any other act in law) shall consist of more than twenty-five members."

The same section went on to provide that the Act, except where expressly applicable thereto, should not apply to (i) partnerships existing before November 1st, 1844, (ii) any company for executing such works as bridges, canals, reservoirs, railways, harbours, and the like, which could not be executed without Parliamentary authority, (iii) "any company incorporated or which may be hereafter incorporated by statute or charter," or (iv) "any company authorised or which may be hereafter authorised by statute or letters patent to sue or be sued in the name of some officer or person."

By s. 4, before even advertising the intention or proposal to form a company within the Act (whether for executing works under Parliamentary authority or not), the promoters had to file with the Registrar of Joint-Stock Companies a return of the proposed name of the company, its business or purpose, and the names, addresses, and occupations of the promoters. Upon registration of these particulars the promoters were entitled to a "Certificate of Provisional Registration." But this did not incorporate the company; any joint-stock company formed for any purpose could only act "provisionally" until it had obtained a "Certificate of

Complete Registration" (*g*), that is to say (*h*), the promoters could assume the name of the intended company coupled with the words "Registered Provisionally"; they could open subscription lists; allot shares and receive deposits thereon at a rate not exceeding ten shillings per cent. beyond the amount (if any) required for making Parliamentary deposits; and perform such other acts as were necessary for constituting the company, or for obtaining letters patent or a charter, or an Act of Parliament. But either before or after publication of the prospectus or advertisement, as soon as the further matters were decided on, there had to be registered (*i*) other particulars, such as the situation of the company's place of business, the names etc. of the formation committee, officers and subscribers, and (before circulation) a copy of every prospectus or advertisement as to the formation of the company. The certificate of complete registration could not be obtained (*k*) until the company had been "formed" by a deed of settlement which contained provisions similar to those now found in the memorandum and articles of association of a company. In the case of a company for executing a railway or other work requiring Parliamentary authority, instead of a deed of settlement, there had to be filed copies of the documents required to be deposited under the Standing Orders of the two Houses of Parliament (*l*).

By s. 25, on complete registration being certified, the company, and the then shareholders therein, and all the succeeding shareholders, whilst shareholders, became incorporated as from the date of such certificate by the name of the company as set forth in the deed of settlement, and for the purpose

(*g*) S. 7.
(*h*) S. 23.
(*i*) S. 4.
(*k*) S. 7.
(*l*) S. 9.

of carrying on the trade or business for which the company was formed, but only according to the provisions of the Act, and of such deed, and for the purpose of suing and being sued, and of taking and enjoying the property and effects of the company; with power (*inter alia*) to use the registered name of the company, adding thereto "Registered"; to have a common seal; to sue and be sued in the registered name; to hold lands as a place of business, but not, without licence, generally; and to issue share certificates and borrow moneys. Certain restrictions were placed on companies formed to execute works requiring the authority of Parliament.

The Act contained eighty sections, many of which were such provisions as to management, auditing etc. as are to be found practically to the same effect in the most stringent modern provisions of existing company legislation.

Joint-Stock Companies already existing were not quite disregarded, for s. 58 provided that all of them to which the Act applied, whether incorporated by Act of Parliament or by charter, or privileged by letters patent, or established by a deed of settlement, or any other instrument, or by virtue of any other authority whatever or in any other way whatever, should, under penalties, before February 1st, 1845, register some small particulars. If they complied they were entitled *gratis* to a certificate of registration, which, however, gave them no powers or privileges under the Act; but facilities were given for complete registration of then existing companies (other than assurance companies). Many of them had no advantage to gain by obtaining complete registration, for the Act did not limit the liability of members.

By s. 66 a judgment against a company completely registered, except companies incorporated

by Act of Parliament or charter, or companies the liability of members of which was restricted by virtue of any letters patent, could be enforced by execution not only against the assets of a company but also against the property of any shareholder who had not ceased to be such for three years. And by s. 67 a shareholder who had suffered from execution had a remedy over against the company and a right of contribution from the other shareholders.

Limited Liability Act, 1855.

The next Act of importance was the Limited Liability Act, 1855 (*m*), by which any joint-stock company thereafter formed under the Act of 1844 (*n*) (other than an assurance company) with a capital divided into shares of a nominal value of not less than £10 each, and any solvent joint-stock company (except as aforesaid) already registered under the Act 7 & 8 Vict. c. 110, and any solvent joint-stock company (except as aforesaid) constituted under any private Act of Parliament, was enabled to obtain a certificate of complete registration "with limited liability" on complying with the requirements of the Act as to registration etc. (*o*). The company had to take the word "Limited" as the last word of its name, and (*p*) its members were not liable under any judgment against the company, or for any of its debts or engagements, except where execution against the company failed to realise sufficient, in which case the execution might be ordered to be issued against any shareholders to the extent only of the portions of their shares not then paid up. When three-fourths of the capital of such company had been lost the directors had to take steps to dissolve and wind it up (*q*).

(*m*) 18 & 19 Vict. c. 133.
(*n*) 7 & 8 Vict. c. 110.
(*o*) Ss. 1, 2, and 3.
(*p*) Ss. 7 and 8.
(*q*) S. 13.

Joint-Stock Companies Act, 1856.

The Joint-Stock Companies Act, 1856 (*r*), somewhat hastily repealed the Act of 1844 (*s*), and an Act of 1847 slightly amending it (*t*), and also the Limited Liability Act, 1855, but provided (*u*) that the repeal should not take effect as to any company completely registered under the Act of 1844 until such company had obtained registration as thereinafter mentioned. Its 108th section provided that certain Winding-up Acts should not apply to companies registered under the Act of 1856, or under the Act of 1844 after they had been registered under the Act of 1856. Section 110 required that every company completely registered under the Act of 1844 should, before November 3rd, 1856, and that any other company duly constituted by law before the Act of 1856 and having seven or more shareholders, might at any time thereafter, register itself as a company under the Act of 1856 either with or without limited liability, but registration with limited liability was only allowed when the company had either obtained registration under the repealed Act of 1855 (*w*), or had obtained the assent of a certain majority of its stockholders. Section 111 set out the requirements for registration of existing companies. Section 2 provided that the Act should not apply to persons associated together for the purpose of banking or insurance. Section 4 prohibited under penalties, after November 3rd, 1856, the carrying on in partnership by more than twenty persons of any trade or business having gain for its object, unless such persons were registered under the new Act, or were authorised to trade by some private Act of Parliament or by Royal Charter or letters

(*r*) 19 & 20 Vict. c. 47 (by s. 107).
(*s*) 7 & 8 Vict c. 110.
(*t*) 10 & 11 Vict. c. 78.
(*u*) S. 107 (3).
(*w*) 18 & 19 Vict. c. 133.

patent, or were working mines within the jurisdiction of the Stannaries.

Many of the provisions of the Act of 1856 were practically, if not exactly, reproduced in the subsequent Companies Act, 1862 (*x*). As to new companies, seven or more persons by signing a "Memorandum of Association," and complying with the requirements as to registration, were enabled (*a*) to form themselves into an incorporated company with or without limited liability. This memorandum had to state the name of the company, the part of the United Kingdom—England, Scotland, or Ireland —in which the registered office of the company was to be; the objects of the company; whether the liability of the shareholders was to be limited or unlimited; the amount of nominal capital; and the number of shares into which the capital was divided and the amount of each share. Further, in the case of a limited company, "Limited" had to be the last word in the name of the company (*b*). By s. 8 each subscriber of the memorandum had to sign for at least one share. The memorandum was the charter or constitution of the company. It might or might not be accompanied by another document, signed by those who had signed the memorandum, called the "Articles of Association," and "prescribing regulations for the company" (*c*). If there were no articles, regulations in Table B in the schedule to the Act were the company's articles; these, however, could be modified or excluded altogether by articles filed with the memorandum, or subsequently adopted in the prescribed manner. But articles were to be in a form set forth in Form C in the schedule "or as near thereto as circumstances admit" (*d*).

(*x*) 25 & 26 Vict. c. 89.
(*a*) S. 3.
(*b*) S. 5.
(*c*) S. 9.
(*d*) S. 10.

The Form C provided among other things as follows:—

"No shareholder shall transfer his shares without the consent of the directors expressed in writing.

"If any shareholder feels aggrieved with the refusal of the directors to allow him to transfer his shares, the matter shall be settled by arbitration."

The memorandum and articles, if any, were to be filed with the Registrar of Joint-Stock Companies, who thereupon certified that the company was incorporated, and in the case of a limited company, that it was limited; and it was further provided that "the subscribers of the memorandum of association, together with such other persons as may from time to time become shareholders in the company, shall thereupon be a body corporate by the name prescribed in the memorandum of association, having a perpetual succession and a common seal, with power to hold lands; but with such pecuniary liability on the part of the shareholders as is hereinafter mentioned" (*e*).

Section 14 provided that the directors should be liable for debts if a dividend was paid when the company was known to be insolvent; section 20 prescribed a form of transfers of shares; and by s. 22 "the amount of calls for the time being unpaid on any share shall be deemed a debt due from the holder of such share to the company."

Section 33 enabled a company registered under the Act by "special resolution" (*f*) to alter and make new provisions in lieu of, or in addition to, any of its regulations—not its memorandum—whether contained in Table B or in separate articles. Section 37 enabled a company, if so authorised by its regulations, to increase its capital, which was, of course, an alteration of one provision of its memorandum of association. By s. 39, carrying on business for

(*e*) S. 13. (*f*) Defined in s. 34.

more than six months with less than seven members rendered the survivors personally liable for the company's debts.

Part III. of the Act contained elaborate provisions for the winding-up, not only by the Court but voluntarily, of all companies registered under it or under the Act of 1844 from and after the date at which the latter had obtained registration under the Act of 1856. Section 61 provided that in winding-up the existing shareholders should be liable to contribute to an amount sufficient to pay the debts of the company and the expenses of winding-up, "with this qualification, that if the company is limited, no contribution shall be required from any shareholder exceeding the amount, if any, unpaid on the shares held by him." The Act, of course, contained provisions exonerating past shareholders (*g*).

Joint-Stock Companies Act, 1857.

Apparently, the old companies did not come cheerfully under the Act of 1856, so by s. 23 of the Joint-Stock Companies Act, 1857, (*h*) the repealing section (s. 107) of the 1856 Act was itself repealed, and the three Acts thereby repealed (*i*) were to be deemed to have been and to be still unrepealed as to any company completely registered which had not obtained registration under the 1856 Act, until it had obtained registration under the Acts of 1856 and 1857, as from which time—and not before—the revived Acts were to be deemed repealed as to such company. Such companies were required to register under the Acts of 1856 and 1857 by November 2nd, 1857; if default was made in registering by that date, the company was incapable of suing or paying dividends until it did register, but the default did not make the company an illegal one (*k*). Section 29

(*g*) Ss. 62, 63.
(*h*) 20 & 21 Vict. c. 14.
(*i*) The Acts of 1844, 1847, and 1855. See p. 7, *ante*.
(*k*) Ss. 27, 28.

enabled but did not require companies of seven or more shareholders, with a fixed capital in shares, and duly constituted by law before the Act of 1857, to register under the Acts of 1856 and 1857, either with or without limited liability; but if previously without limited liability, certain assents had to be obtained to registration with limited liability. Section 3 repealed the corresponding s. 4 of the 1856 Act, and provided that if after July 13th, 1857, more than twenty persons carried on in partnership any trade or business having for its object the procurement of gain to the partnership, then unless such persons were (i) a company registered under the Act of 1856, (ii) a company incorporated or otherwise legally constituted by or in pursuance of some Act of Parliament, Royal Charter, or letters patent, or (iii) engaged in working mines in the Stannaries jurisdiction, each one of such persons should be severally liable for all the debts of the partnership. Section 5 enabled every limited company by special resolution to turn its fully paid shares into stock. Section 17 gave power to liquidators in a voluntary winding-up to sell the whole or part of the company's property to another company for shares in the latter. By s. 25, when any company completely registered under the Act of 1844 had obtained registration under the Act of 1856 after November 3rd, 1856, but before the passing of the Act of 1857, the registration was to be as good as if effected on or before November 3rd, 1856. By s. 26, the provision in the Act of 1856 compelling registration under that Act (*l*) was repealed, and by the following section every company completely registered under the Act of 1844, including companies completely registered under the Act of 1855 (except insurance companies), was bound, under penalty, if

(*l*) S. 110.

not registered under the Act of 1856, to register under the 1856 and 1857 Acts on or before November 2nd, 1857. Section 19 enabled the Court, instead of making a winding-up order, to order that a voluntary winding-up should be continued under the supervision of the Court.

Joint-Stock Banking Companies Act, 1857.

The Legislature seems to have had great suspicions as to banks. By the Joint-Stock Banking Companies Act, 1857 (*m*), s. 2 of the Act of 1856 was repealed so far as it related to persons associated together for the purpose of banking, subject to a proviso that no existing or future banking company should be registered as a limited company (*n*). A banking company of seven or more persons formed under an Act of 1844 relating to Joint-Stock Banks (*o*) was required to register under the new Act (with which the Joint-Stock Companies Acts of 1856 and 1857 were incorporated (*p*)) on or before January 1st, 1858 (*q*). In case of default, besides certain personal penalties, the company was rendered incapable of suing or paying dividends, though it was not rendered an illegal company (*r*). Banking companies of seven or more persons, having a share capital, and legally carrying on business before the passing of the Act, and not required to register, were permitted to do so under the Act, with the assent of a certain majority of the shareholders—*but not with limited liability;* and on registration all provisions in any Act of Parliament, letters patent or deed of settlement constituting or regulating the company, which were inconsistent with the Joint-Stock Companies Acts, 1856 (*s*), and 1857 (*t*), or with the new Act, were no

(*m*) 20 & 21 Vict. c. 49.
(*n*) S. 3.
(*o*) 7 & 8 Vict. c. 113.
(*p*) S. 2.
(*q*) S. 4.
(*r*) S. 5.
(*s*) 19 & 20 Vict. c. 47, p. 7, *supra*.
(*t*) 20 & 21 Vict. c. 14, p. 10, *supra*.

longer to apply to the company (*u*). The Act as to Joint-Stock Banks of 1844 (*x*) was repealed as to any banking companies thereafter formed, and was, from the time when any company formed under it was registered under the new Act, to be repealed as to such company, and thereafter such company was to be regulated by a part of Table B of the Act of 1856, subject to the power of alteration given by that Act (*a*). Seven or more persons associated for the purpose of banking were enabled to register themselves as a company under the Act (but not with limited liability) if the capital was divided into shares of not less than £100 each; and not more than ten persons were, after the passing of the Act, unless registered under it, to form themselves into a banking partnership, or if so formed to carry on the business of banking (*b*).

Other Acts of 1857.

The Joint-Stock Companies Winding-Up Amendment Act, 1857 (*c*), contained certain provisions as to the rights of creditors of companies in winding-up or in a bankrupt state; and a further Act of the same year (20 & 21 Vict. c. 80) provided that the Joint-Stock Companies Acts, 1856 and 1857, should not be deemed to have repealed the Joint-Stock Companies Act, 1844 (*d*), or any Act amending it, so far as concerned insurance companies already formed under that Act, or thereafter formed.

Joint-Stock Companies Amendment Act, 1858.

The Joint-Stock Companies Amendment Act, 1858 (*e*), related almost exclusively to winding-up, enabling certain partnerships to register under the Joint-Stock Companies Act, 1857, or the Joint-

(*u*) S. 6.

(*x*) 7 & 8 Vict. c. 113. The repeal also affected an Act of 1846 (9 & 10 Vict. c. 75) relating to Joint-Stock Banks in Scotland and Ireland.

(*a*) S. 12.

(*b*) S. 13.

(*c*) 20 & 21 Vict. c. 78.

(*d*) 7 & 8 Vict. c. 110.

(*e*) 21 & 22 Vict. c. 60.

Stock Companies Acts, 1856, 1857, for the purpose of winding-up under those Acts (*f*).

Act of 1858 as to banking companies.

By an Act of the same session (*g*) so much of the Joint-Stock Banking Companies Act, 1857 (*h*), as prohibited a banking company from being formed under that Act with limited liability, was repealed; but where banks claimed to issue notes, they were to continue subject to unlimited liability in respect of them, and the shareholders were to be liable for the whole amount of the note issue in addition to the sum for which they would be liable as shareholders of a limited company.

Companies Act, 1862.

The next enactment was the Companies Act, 1862 (*i*), which remained the principal British Companies Act until 1908, and is the earliest of the Acts which the present statute purports to consolidate.

By its 205th section the Acts specified in the first part of the third schedule to the Act were repealed, but certain provisions of them, set out in the second part of the same schedule, were re-enacted. The repealed Acts were (among others) the Joint-Stock Companies Act, 1844 (*k*), already referred to; the 7 & 8 Vict. c. 111, 8 & 9 Vict. c. 98, 11 & 12 Vict. c. 45, 12 & 13 Vict. c. 108, and 20 & 21 Vict. c. 78 (which were all winding-up Acts); the 7 & 8 Vict. c. 113 (as to joint-stock banks); the 10 & 11 Vict. c. 78 (as to joint-stock companies), the Joint-Stock Companies Acts of 1856 (*l*) and 1857 (*m*); the Act of 1857 as to banking companies (*n*), and the Act of the same session further amending the Act of 1856 (*o*), and also the Acts of 1858 (*p*).

(*f*) S. 23.
(*g*) 21 & 22 Vict. c. 91.
(*h*) 20 & 21 Vict. c. 49.
(*i*) 25 & 26 Vict. c. 89.
(*k*) 7 & 8 Vict. c. 110. See p. 2, *ante*.
(*l*) 19 & 20 Vict. c. 47.
(*m*) 20 & 21 Vict. c. 14.
(*n*) 20 & 21 Vict. c. 49, p. 12, *supra*.
(*o*) 20 & 21 Vict. c. 80.
(*p*) 21 & 22 Vict. c. 60, and 21 & 22 Vict. c. 91.

The re-enacted provisions were s. 47 of 7 & 8 Vict. c. 113, as to banking companies of more than six persons within sixty-five miles of London, and not within 7 & 8 Vict. c. 113, suing and being sued, and as to enforcing judgment against them; and part of s. 12 of 20 & 21 Vict. c. 49, declaring it lawful for any number of persons, not exceeding ten, to carry on banking in the same manner as six persons or more could previously have carried on the business of banking. The repeal was not to affect the incorporation of any company registered under a repealed Act, or Table B in the schedule to the Act of 1856 so far as it applied to any company existing at the time when the Act of 1862 came into force (*q*). And every insurance company registered under 7 & 8 Vict. c. 110 was on or before November 2nd, 1862, and every other company which was required by a repealed Act to register under the Joint-Stock Companies Acts, and which had not so registered, was, within a short period, obliged to register itself as a company under the Act of 1862 (*r*). Default in complying with these last provisions brought penalties on the directors and incapacitated the company from suing or paying dividends, but it did not make the company illegal (*s*).

Part VI. (*t*) of the Act of 1862 related to companies registered under the Joint-Stock Companies Acts (*u*). By its 176th section, subject as thereinafter mentioned, the new Act, with the exception of Table A, in the first schedule, was to apply to companies

(*q*) S. 206.
(*r*) S. 209.
(*s*) S. 210.
(*t*) Ss. 175–178.
(*u*) *I.e.* (s. 175) the Joint-Stock Companies Act, 1856; the Joint-Stock Companies Acts, 1856 & 1857; the Joint Stock Banking Companies Act, 1857; and the Act enabling Joint-Stock Banking Companies to register with limited liability, but not the Act of 1844 (7 & 8 Vict. c. 110).

formed and registered under the Joint-Stock Companies Acts or any of them as if those companies had been formed and registered under the Act of 1862, and the power of altering articles under that Act was extended to altering Table B of the Joint-Stock Companies Act, 1856. By s. 177 the new Act was also to apply in the same manner to companies registered but not formed under the Joint-Stock Companies Acts or any of them as if they had been registered under the Act of 1862. By s. 178 any company registered under the Joint-Stock Companies Acts might cause its shares to be transferred in a manner already in use or in such manner as the company might direct.

Part VII. (*x*) related to existing companies authorised to register under the new Act. By s. 179 no company having its liability limited by Act of Parliament, and not being a joint-stock company (*a*), could register under Part VII.; nor could any company so limited register under Part VII. as an unlimited company or a company limited by guarantee; nor could a company which was not a joint-stock company register under Part VII. as a company limited by shares. No company could register thereunder without the assent of a majority of its members. In case a company not having liability limited by Act of Parliament or letters patent registered as a limited company under the Act of 1862, a three-fourths majority was required, and there were other requirements when a company registered itself as a company limited by guarantee. By s. 180, subject as above, every existing company registered under the Joint-Stock Companies Acts, consisting of seven or more members, and every company thereafter formed in pursuance of any Act of Parliament, "other than this Act," or of letters patent, or

(*x*) Ss. 179-198. (*a*) As defined in s. 181.

working mines in the Stannaries, or being otherwise duly constituted by law, and having seven or more members, was enabled to register itself under the Act as an unlimited company, a company limited by shares, or a company limited by guarantee. By s. 182 banking companies claiming to issue notes in the United Kingdom were not to be entitled to limited liability in respect of such issue, the members being liable therefor in addition to their liability as members. Later sections pointed out how registration under Part VII. was to be obtained, and by s. 196, when such registration had been obtained, all provisions of any Act of Parliament, deed of settlement, or other instrument constituting or regulating the company were to take the place of a registered memorandum and articles, and the provisions of the Act of 1862 were to apply to the company as if it had been formed under the Act, subject to certain provisions—as that Table A of 1862 was not to apply unless adopted by special resolution; that shares need not be numbered, if not previously numbered; that the company could not alter any Act of Parliament relating to it, or without leave of the Board of Trade, any letters patent; that the company could not alter any provision of the instrument constituting or regulating it, which, if the company had been formed under the Act, would have been contained in its memorandum of association, and which would not have been alterable under the Act; but this last provision was not to derogate from any power of alteration given by the instrument constituting the company.

The Act of 1862 gave no power to a company to reduce its capital, and old companies which possessed that power lost it by registering under the Act. Future associations of more than ten persons to carry on banking were prohibited, unless registered

as a company under the Act, or formed under some other Act of Parliament, or letters patent; and there was a prohibition as to any future association of more than twenty persons to carry on any other business having for its object the acquisition of gain by the association or its members, unless it was registered as a company under the Act or was formed under some other Act of Parliament or letters patent or was a mining company in the Stannaries (*b*). As to new companies, the old number of seven or more original members signing a memorandum of association was required (*c*). The liability of members might be limited either to the amount unpaid on the shares, or to the amount they guaranteed by the memorandum in the event of the company's being wound up (*d*). The contents of the memorandum of a guarantee company differed a little from that of a company limited by shares, and that of an unlimited company differed from both (*e*). The conditions of the memorandum might be altered by increasing the capital, consolidating and dividing the shares into shares of larger amount; or converting paid-up shares into stock, or changing the company's name, but otherwise no alteration could be made in the memorandum (*f*). A company limited by shares could either register with its memorandum articles of association signed by those who signed the memorandum (*g*), or it could register without articles, in which case Table A in the schedule formed its regulations, or it might adopt Table A (*h*). Guarantee and unlimited companies were required to have articles which might, but need not, incorporate all or any of Table A. The articles of these

(*b*) S. 4.
(*c*) S. 6.
(*d*) S. 7.
(*e*) Ss. 9, 10.
(*f*) S. 12.
(*g*) S. 14.
(*h*) S. 15.

companies had to state certain particulars not required in the case of a company limited by shares (*i*).

Incorporation was evidenced by a certificate of the fact, and thereupon the signatories of the memorandum and other persons becoming members became a body corporate, "capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands" (*k*).

Companies formed for the purposes of art and the like, not involving the acquisition of gain, could not hold more than two acres of land without the licence of the Board of Trade (*l*).

Part II. related to the distribution of capital and the liability of members, s. 38 pointing out the liabilities of present and past members respectively in the event of winding up. It was provided by s. 22 that any shares might be transferred in the manner stipulated by the articles; and if the articles were silent on this point there was an unrestricted right of transfer, but the articles might place any restrictions on the right.

Part III. related to management and administration, including registration of mortgages and a limited right of inspecting the register (s. 43), holding general meetings, altering regulations, and passing resolutions, notices etc. The Board of Trade was also given power to alter Table A (s. 71).

Part IV. contained numerous provisions as to the winding-up of companies, continuing the then old methods of winding-up—by the court, voluntarily, and under the supervision of the court. Sections 161 and 162 related to sales of the company's property for shares in another company, and s. 165 provided

(*i*) S. 14.
(*k*) S. 18.
(*l*) S. 21.

a summary method of dealing with officers guilty of misfeasance or breach of trust.

Part V. related to the registration office; and the remaining parts have been already dealt with.

Companies Seals Act, 1864.

In 1864 an Act (*m*) was passed enabling companies under the Act of 1862, and carrying on business in foreign countries, to have official seals to be used in such countries.

Companies Act, 1867.

The Companies Act, 1867 (*n*), made some important alterations. Its fourth section provided that when a company was in future formed as a limited company under the Act of 1862, the liability of the directors or managers or managing director should be unlimited, if it was so provided by the memorandum of association; but very few companies (if any) have been formed where such a provision has been inserted. Express notice had to be given of this liability to any person proposed to be appointed a director or manager (*o*). By s. 8 an existing limited company might (if so authorised by its articles) by special resolution add a similar provision to its memorandum.

A more important alteration made by the Act of 1867 was that which enabled a company limited by shares (if so authorised by its articles for the time being) to reduce its capital if such reduction was confirmed by an order of the (then) Court of Chancery (*p*). Another section enabled a company (so authorised by its articles for the time being) by special resolution to subdivide its shares into shares of a smaller amount (*q*). Section 23 enabled certain companies not formed for gain but for promoting some useful object, such as art, science, religion, or

(*m*) The Companies Seals Act, 1864 (27 & 28 Vict. c. 19).

(*n*) 30 & 31 Vict. c. 131.

(*o*) S. 7.

(*p*) S. 9.

(*q*) S. 21.

charity, by licence of the Board of Trade, to register with limited liability, but without the word "Limited" as part of their names, and without the power of paying any dividends to members. Other provisions of this Act were that a share in a company was to be deemed to have been issued on the terms of being paid up in cash unless it was otherwise determined by a contract in writing filed before issue with the Registrar of Joint-Stock Companies (*r*); and that prospectuses inviting persons to subscribe for shares were to be deemed fraudulent unless certain particulars as to contracts were stated therein (*s*). These two sections until repealed (*t*) caused much litigation and also some hardship. Other sections of the Act provided for the issue of share warrants to bearer (*u*), and defined how a company's contracts were to be entered into etc. (*x*).

Joint-Stock Companies Arrangement Act, 1870.

The Joint-Stock Companies Arrangement Act, 1870 (*a*), enabled the Court of Chancery, when a company was in liquidation (either voluntarily or otherwise) to order meetings of its creditors to be called with a view to compromise or arrangement, and to sanction an arrangement so provisionally arrived at.

Life Assurance Companies Acts, 1870–1872.

The Life Assurance Companies Acts of 1870 (*b*), 1871 (*c*), and 1872 (*d*), imposed many obligations on incorporated and unincorporated Life Assurance Companies, especially as to deposits of substantial sums on setting up business, and making returns concerning their doings. The Acts also related to the amalgamation and transfer of businesses, reduction of contracts by the court, and winding-up of these companies.

(*r*) S. 25.
(*s*) S. 38.
(*t*) In 1900, see p. 26, *post*.
(*u*) Ss. 27–36.
(*x*) S. 37.

(*a*) 33 & 34 Vict. c. 104.
(*b*) 33 & 34 Vict. c. 61.
(*c*) 34 & 35 Vict. c. 58.
(*d*) 35 & 36 Vict. c. 41.

Before the next Act was passed the old Court of Chancery had ceased to exist and had been merged in the High Court of Justice. In 1877, JESSEL, M.R., held that where a company had lost part of its paid-up capital the court had no jurisdiction to write off the loss by reducing the nominal amount of the shares—in other words, that only uncalled capital could be reduced (*e*). In consequence of that decision, which has since been shown to be erroneous (*British and American Trustee and Finance Corporation* v. *Couper*, [1894] A. C. 399, 412; and see *Poole* v. *National Bank of China, Ltd.*, [1907] A. C. 229, 240), there was passed in the same year the Companies Act, 1877 (*f*), which provided (s. 3) that "capital" in the Act of 1867 included paid-up capital, and that the power to reduce capital included the power to cancel any lost capital or capital unrepresented by available assets, or to pay off any capital in excess of the wants of the company. The confirmation of the court was required, but under less stringent conditions in these cases (s. 4), and a power was given (s. 5) to cancel unissued shares without going to the court at all.

Companies Act, 1877.

Companies Act, 1879.

The Companies Act of 1879 (*g*) enabled companies registered before or after the Act as unlimited to register under the Companies Acts, 1862 to 1879, as limited companies, and enabled companies already registered as limited to re-register under the Act of 1879 (s. 4). If thereupon a company increased its capital by increasing the nominal amount of its shares, the increased capital was incapable of being called up except in the event of and for the purpose of the company's being wound up, and if there was no initial increase, part of the existing uncalled

(*e*) *Re Ebbw Vale Steel, Iron, and Coal Co.* (1877), 4 Ch. D. 827.

(*f*) 40 & 41 Vict. c. 26.

(*g*) 42 & 43 Vict. c. 76.

capital might be put on the same footing (s. 5). A limited company was also enabled by special resolution to make any part of its uncalled capital uncallable except on and for winding up. The same Act repealed s. 182 of the Act of 1862, and replaced it by a fresh enactment as to the liability of members of banks of issue registered as limited companies. The Act also provided (s. 7) for the audit of accounts of limited banking companies. A company authorised to register under the Act of 1879 might do so notwithstanding anything in its own Act of Parliament or other instrument of constitution (s. 10).

Companies Act, 1880.

The Companies Act, 1880 (*h*), allowed a company which had accumulated a sum of undivided profits, which might with the shareholders' assent be distributed as dividend, by special resolution filed with the Registrar, and without the court's sanction, to return the same or part thereof to the shareholders in reduction of the paid-up capital, the uncalled capital being correspondingly increased and being liable to be called up in future (*i*), but any shareholder might require the company to retain the money proposed to be paid to him in respect of his shares (*k*). The same Act empowered the Registrar of joint-stock companies to strike defunct companies off the register, but gave the court the power of restoration to the register on the petition of the dead company or of any member aggrieved (s. 7).

Companies (Colonial Registers) Act, 1883.

The Companies (Colonial Registers) Act, 1883 (*l*), enabled companies with share capital, and registered under the Act of 1862, to keep local registers of their members in British Colonies.

The Preferential Payments in Bankruptcy Act,

(*h*) 43 Vict. c. 19.
(*i*) S. 3.
(*k*) S. 5.
(*l*) 46 & 47 Vict. c. 30.

Preferential Payments in Bankruptcy Act, 1888.

1888 (*m*), gave priority in bankruptcy and in the winding-up of companies to certain debts, *e.g.* parochial rates, and wages, to a certain limit, of clerks, servants, labourers and workmen.

Companies (Memorandum of Association) Act, 1890.

In 1890 three important Acts were passed. The Companies (Memorandum of Association) Act (*n*) enabled a company registered under the Acts, 1862 to 1886, to alter the objects of the company as stated in its memorandum of association or deed of settlement, or to substitute a memorandum and articles for a deed of settlement, but the alteration had to be confirmed by an order of the Court. The

Companies (Winding-up) Act, 1890.

Companies (Winding-Up) Act (*o*) placed the winding-up jurisdiction in the hands of (i) judges of the High Court nominated from time to time by the Lord Chancellor, (ii) the Palatine Courts, and (iii) when the paid-up capital did not exceed £10,000, certain County Courts in whose districts the company was domiciled; the winding-up of companies working mines within the Stannaries was left to the Stannaries Court (ss. 1, 2). The same Act (s. 4) constituted officers called "Official Receivers," and provided that the Official Receiver should become provisional liquidator from the time when the winding-up order was made until a liquidator was appointed, and he might be continued as permanent liquidator if no other person was selected. Apart from his duties as a liquidator, the Official Receiver had independent duties under the Act, being an officer of the Court and also of the Board of Trade, which had large controlling powers under the Act. This Act also gave the Court power to order the public examination of officers of the company suspected of fraudulent dealing, and made provision

(*m*) 51 & 52 Vict. c. 62.
(*n*) 53 & 54 Vict. c. 62.
(*o*) 53 & 54 Vict. c. 63. The Act did not apply to Scotland or Ireland.

for the custody and application of funds coming to the hands of liquidators. The Directors Liability Act, 1890 (*p*), made directors and promoters liable for misstatements in prospectuses although not fraudulently made. It was passed in consequence of the decision of the House of Lords in *Derry* v. *Peek* (*q*). Directors Liability Act, 1890.

The Forged Transfers Acts, 1891 and 1892 (*r*) enabled companies to make compensation in cash for losses arising from forged transfers or transfers under forged powers of attorney; but these Acts do not apply exclusively to companies under the Companies Act, and are unaffected by the Consolidation Act. Forged Transfers Acts, 1891 and 1892.

The title of the Stannaries Court (Abolition) Act, 1896 (*s*), tells what this Act did; under it the winding-up jurisdiction in respect of certain companies was transferred to the County Courts of Cornwall. Stannaries Court (Abolition) Act, 1896.

The Preferential Payments in Bankruptcy Amendment Act, 1897 (*t*), extended the priority of the debts mentioned in the Act of 1888 (*u*) as against floating charges created by debentures and debenture stock. Preferential Payments in Bankruptcy Amendment Act, 1897.

The Companies Act, 1898 (*x*), enabled the Court to grant relief where contracts had not been filed as required by s. 25 of the Act of 1867 (*a*) through inadvertence and the like. Companies Act, 1898.

The Bodies Corporate (Joint Tenancy) Act, 1899 (*b*), enables a body corporate to hold any property jointly with an individual or another body corporate or both, and this statute is still in operation. Bodies Corporate (Joint Tenancy) Act, 1899.

The Companies Act, 1900 (*c*), differentiated between what were then known as "private companies"— Companies Act, 1900.

(*p*) 53 & 54 Vict. c. 64.

(*q*) (1889) 14 App. Cas. 337.

(*r*) 54 & 55 Vict. c. 43, and 55 & 56 Vict. c. 36.

(*s*) 59 & 60 Vict. c. 45.

(*t*) 60 & 61 Vict. c. 19.

(*u*) 51 & 52 Vict. c. 62. See p. 24, *ante*.

(*x*) 61 & 62 Vict. c. 26.

(*a*) 30 & 31 Vict. c. 131. See p. 21, *ante*.

(*b*) 62 & 63 Vict. c. 20.

(*c*) 63 & 64 Vict. c. 48.

namely, those which did not invite the public to subscribe for their shares—and public companies, which did issue such invitations. As regards the latter, stringent restrictions were imposed which were not imposed on the private companies, *e.g.* as regards the appointment of directors, the allotment of shares, the commencement of business, and the filing and contents of prospectuses, whether in respect of shares, debentures, or debenture stock. But many of its provisions applied to both classes of companies, *e.g.* as to the qualification of directors, the early statutory meeting (an innovation), the registration of floating securities, securities of any issue of debentures, and charges on uncalled capital, the compulsory audit, and the reconversion of stock into shares. The Act countenanced under certain conditions the underwriting of shares of companies going to the public (s. 8), and repealed ss. 25 and 38 of the Act of 1867 (*d*). Although the Act required a contract to take shares for a consideration other than cash to be registered, the omission to register did not make the shareholder liable to pay up anything on the shares. Certain particulars of contracts and a vast deal more information had to be stated in prospectuses. The language of the Act, which was rushed through Parliament, is in many parts most obscure.

In 1906 the Board of Trade, under a power of the Act of 1862 (*e*), issued a new Table A for future use instead of the out-of-date Table A used for forty-four years previously.

Companies Act, 1907.

The Companies Act, 1907 (*f*), was, if possible, more incomprehensible than its immediate predecessor. The only provisions of it at first in force

(*d*) 30 & 31 Vict. c. 131, s. 71.
p. 20, *supra*.
(*e*) 25 & 26 Vict. c. 60,
(*f*) 7 Edw. 7, c. 50.

were those which declared the validity of perpetual debentures, and provided that the redemption of one or more debentures of a *pari passu* series should not necessarily operate so as to let the other debentures of the series close in and prevent the valid reissue of the redeemed debentures, so as to have equal rank. The rest of the Act did not come into operation until July 1st, 1908, as from which date it effected great changes. To the old so-called private companies, or some of them, restrictions and requirements were applied which formerly did not extend to them; for instance, the filing, before allotment of shares or debentures, of a document containing many of the particulars already required to be stated in a public company's prospectus. The Act required companies of both classes to include in the annual filed summary a statement in the form of an audited balance-sheet, containing a summary of its capital, liability, and assets. A "private company," as defined by the Act (*g*), was exempted from these requirements. The new creature called a "private company" was one which by its articles

(i) restricted the rights to transfer its shares, and

(ii) limited the number of its members (exclusive of persons in the employment of the company) to fifty, and

(iii) prohibited any invitation to the public to subscribe for any shares or debentures of the company;

but two or more persons holding one or more shares jointly were to be treated as a "single member." Moreover, whenever in the Acts a minimum of seven persons was required, only two members were to be required in the case of a private company; that is to say (*inter alia*), two or more persons might form themselves into a private company, and the dwindling

(*g*) S. 37.

of members was not to be a ground for winding-up unless the number was reduced below two.

The Act of 1907 made numerous amendments in former Acts. The provisions of the 1900 Act (*h*) as to the contents of a prospectus were altered (s. 2) without being made much clearer. Some underwriting was allowed even where the company did not issue a prospectus (s. 7). Under certain restrictions payment of interest out of capital during the construction of works was allowed (s. 9). The provisions of 1900 as to registering charges were slightly altered (s. 10), registration being also required of the appointment of a receiver and manager, and of the total amount of secured debts created before July 1st, 1908 (ss. 11, 12). Floating charges, not for cash, made shortly before winding-up were invalidated (s. 13). A company might enforce by specific performance a contract to take its debentures (s. 16). Greater powers of inspection of registers were given (ss. 17, 18). The auditing clauses of the Act of 1900 were altered (s. 19). Amendments were made in the law as to meetings of shareholders (ss. 24, 25). Important changes were made as to winding-up (ss. 26–31); for instance, in a voluntary winding-up the liquidator was to call a meeting of creditors, to whose wishes the court might give effect, and a winding-up petition might be presented by a "contingent or prospective creditor." Restrictions were also placed on the dissolution of companies in liquidation. Moreover (s. 35), companies incorporated outside, but carrying on business within the United Kingdom, were required to file with the Registrar of Joint-Stock Companies (*inter alia*) certified copies of their instrument of constitution, lists of their directors, and the name and address of some person within the

(*h*) 63 & 64 Vict. c. 48, s. 10.

jurisdiction on whom process might be served. There was also a clause (s. 39) enabling a company to modify the conditions of its memorandum so as to reorganize its capital, but confirmation by the Court was required; and any person or persons trading under a name of which the last word was "Limited," and not incorporated with limited liability, were made liable to penalties (s. 48).

Companies Act, 1908.

Lastly, there was passed in the early part of 1908 an Act (*i*) enabling companies incorporated in British possessions, on complying with certain requirements as to registration, to hold land in this country.

Companies (Consolidation) Act, 1908.

All these Acts, commencing with that of 1862, are consolidated in the Companies (Consolidation) Act, 1908 (*k*). If this statute effects no change in the law, it removes a very real inconvenience and will serve to some extent to elucidate and co-ordinate what had become an exceedingly difficult and complex mass of legislation; as the above survey, slight though it be, amply testifies.

(*i*) Companies Act, 1908 (8 Edw. 7, c. 12).

(*k*) 8 Edw. 7, c. 69.

PART II.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

(8 Edw. 7, Chap. 69.)

An Act to consolidate the Companies Act, 1862, and the Acts amending it.

[21st December, 1908.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

As to the construction of a consolidating statute in the light of decisions on the previous enactments, see *Bank of England* v. *Vagliano Brothers*, [1891] A. C. 107, 144, 145; and as to the effect, as regards construction, of the division of an Act into parts or arranging it under headings, see *Eastern Counties and London and Blackwall Railway Cos.* v. *Marriage* (1860), 9 H. L. Cas. 32; *Falls* v. *Belfast and Ballymena Railway Co.* (1849), 12 Ir. L. R. 233; *Union Steamship Co. of New Zealand* v. *Melbourne Harbour Trust Commissioners* (1884), 9 App. Cas. 365, 369.

Part I.

CONSTITUTION AND INCORPORATION.

Prohibition of Large Partnerships.

Prohibition of partnerships exceeding certain number.

1.—(1) No company, association, or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this

Act, or is formed in pursuance of some other Act of Parliament, or of letters patent.

(2) No company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent, or is a company engaged in working mines within the stannaries and subject to the jurisdiction of the court exercising the stannaries jurisdiction.

This section replaces s. 4 of the Companies Act, 1862, without any material alteration. For the decisions on the repealed section, see Rawlins and Macnaghten on Companies, pp. 110–112. As to the court exercising the Stannaries jurisdiction, see Orders under the Stannaries Court (Abolition) Act, 1896, dated December 16, 1896, and February 5, 1897; and County Court Rules, 1903, Ord. LI.

Memorandum of Association.

Mode of forming incorporated company.

2. Any seven or more persons (or, where the company to be formed will be a private company within the meaning of this Act, any two or more persons) associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability (that is to say), either—

(i) A company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a company limited by shares); or

(ii) A company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the

assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee); or

(iii) A company not having any limit on the liability of its members (in this Act termed an unlimited company).

This section combines ss. 6 and 7 of the Act of 1862, with a slight elucidation of the language, and such alteration as is required to make the old provisions accord with the re-enacted provisions of s. 37 of the Companies Act, 1907, as to private companies. See Rawlins and Macnaghten on Companies, pp. 113-116. For the definition of a private company, see s. 121, p. 140, *post*.

Memorandum of company limited by shares.

3. In the case of a company limited by shares—

(1) The memorandum must state—

(i) The name of the company, with "Limited" as the last word in its name;

(ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate;

(iii) The objects of the company;

(iv) That the liability of the members is limited;

(v) The amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount:

(2) No subscriber of the memorandum may take less than one share:

(3) Each subscriber must write opposite to his name the number of shares he takes.

See s. 8 of the Act of 1862 (the substance of which is here retained) and Rawlins and Macnaghten on Companies, pp. 116-121. For form of memorandum, see Form A in the Third Schedule, p. 308, *post*.

As to the company's name, see s. 8, p. 36, *post*.

The limit on liability cannot be exceeded by the company incurring debts in a foreign country by the laws of which corporations organised outside of it are

subjected to further liabilities (*Risdon Iron and Locomotive Works* v. *Furness*, [1906] 1 K. B. 304).

As the memorandum need not state anything as to the priorities *inter se* of different classes of shares, it may provide for the modification of the rights of the holders of the respective classes being effected in accordance with the provisions of the articles for the time being (*Re Welsbach Incandescent Gas Light Co.*, [1904] 1 Ch. 87).

A subscriber of the memorandum cannot obtain rescission of the agreement, which he enters into by subscribing, on the ground of misrepresentation (*Re Metal Constituents, Ltd.*, [1902] 1 Ch. 707).

Memorandum of company limited by guarantee.

4. In the case of a company limited by guarantee—

(1) The memorandum must state—

(i) The name of the company, with "Limited" as the last word in its name;

(ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate;

(iii) The objects of the company;

(iv) That the liability of the members is limited;

(v) That each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(2) If the company has a share capital—

(i) The memorandum must also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(ii) No subscriber of the memorandum may take less than one share;

(iii) Each subscriber must write opposite to his name the number of shares he takes.

The first sub-section is to the same effect as s. 9 of the Act of 1862, with the addition of paragraph (iv), which was implied but not stated in that section.

Sub-sect. (2) (i) is taken from s. 27 (1) of the Companies Act, 1900; paragraphs (ii) and (iii) are taken from s. 14 of the Act of 1862.

For Forms of Memorandum, see Forms B and C in the Third Schedule, pp. 309, 314, *post*.

The amount undertaken to be contributed by sub-sect. 1 (v) cannot be charged or incumbered (*Re Irish Club Co.*, [1906] W. N. 127). If the company has a share capital, the articles of association also must state the amount of share capital, s. 10, p. 39, *post*.

Memorandum of unlimited company.

5. In the case of an unlimited company—

(1) The memorandum must state—

(i) The name of the company;

(ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate;

(iii) The objects of the company.

(2) If the company has a share capital—

(i) No subscriber of the memorandum may take less than one share;

(ii) Each subscriber must write opposite to his name the number of shares he takes.

Sub-sect. (1) repeats the provisions of s. 10 of the Act of 1862.

Sub-sect. (2) is taken from s. 14 of the same Act.

For Form of Memorandum, see Form D in the Third Schedule, p. 316, *post*.

If the company has a share capital, although it need not be referred to in the memorandum, the articles of association must state the amount of share capital, s. 10, p. 39, *post*.

Stamp and signature of

6. The memorandum must bear the same stamp as if it were a deed, and must be signed by each

subscriber in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England and Ireland. memorandum.

This repeats the first part of s. 11 of the Act of 1862. The stamp required is a 10*s.* stamp, and a fee is payable to the Registrar under s. 244, p. 240, *post* (see Table B in the First Schedule to the Act, p. 301, *post*).

Moreover, a deed stamp on the articles (see s. 14, p. 42, *post*), and an *ad valorem* stamp of 5*s.* per cent. under the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 112, and the Finance Act, 1899 (62 & 63 Vict. c. 9), s. 7, on the amount of the nominal capital of any company registered with limited liability, are also required.

7. A company may not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Act. Restriction on alteration of memorandum.

This section is derived from s. 12 of the Act of 1862, but other alterations have been authorised by subsequent enactments, re-enacted by the Consolidation Act.

The alterations which may now be made are as follows:—

(1) Without the confirmation of the Court—change of name (s. 8), increase of capital (s. 41 (1) (*a*)), cancellation of capital not issued or agreed to be issued (s. 41 (1) (*e*)), conversion of fully paid shares into stock and reconversion of stock into shares (s. 41 (1) (*c*)), consolidation of shares into shares of larger amount (s. 41 (1) (*b*)), sub-division of shares into shares of smaller amount (s. 41 (1) (*d*)), and rendering the liability of directors unlimited (s. 61);

(2) Subject to confirmation by the Court—reduction of paid or unpaid capital (s. 46), alteration of objects (s. 9), reorganisation of capital by consolidation of shares of different classes or division of shares into shares of different classes (s. 45).

Provisions inserted in the memorandum, though not required to be inserted by the Act, are unalterable except as allowed by the Act (*Asbury* v. *Watson* (1885), 30 Ch. D. 376).

As to alteration of the articles of association, see s. 13, p. 41, *post*.

Name of company and change of name.

8.—(1) A company may not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires.

(2) If a company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned company may, with the sanction of the registrar, change its name.

(3) Any company may, by special resolution and with the approval of the Board of Trade signified in writing, change its name.

(4) Where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.

(5) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

Sub-sects. (1) and (2) are taken from the earlier part of s. 20 of the Act of 1862 without alteration. The remaining sub-sections repeat s. 13 of the same Act.

As to special resolutions, see s. 69, p. 84, *post*.

A change of name is not complete until the new certificate of incorporation is issued (*Shackleford, Ford & Co.* v. *Dangerfield* (1868), L. R. 3 C. P. 407).

As to the remedy by injunction in case of a similar name being adopted, see Rawlin and Macnaghten on Companies, pp. 157, 158.

A company fraudulently registering with a view to obtaining the reputation of a firm with a similar name, and the signatories of the memorandum, will be restrained

from keeping the name on the register: *La Société Anonyme des Anciens Etablissements Panhard et Levassor* v. *Panhard Levassor Motor Co.*, [1901] 2 Ch. 513; and see *Aerators, Ltd.*, [1902] 2 Ch. 319.

Alteration of objects of company.

9.—(1) Subject to the provisions of this section a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—

(*a*) to carry on its business more economically or more efficiently; or

(*b*) to attain its main purpose by new or improved means; or

(*c*) to enlarge or change the local area of its operations; or

(*d*) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or

(*e*) to restrict or abandon any of the objects specified in the memorandum.

(2) The alteration shall not take effect until and except in so far as it is confirmed on petition by the court.

(3) Before confirming the alteration the court must be satisfied—

(*a*) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the court, be affected by the alteration; and

(*b*) that, with respect to every creditor who in the opinion of the court is entitled to object, and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the court:

Provided that the court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

(4) The court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.

(5) The court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement: Provided that no part of the capital of the company may be expended in any such purchase.

(6) An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within fifteen days from the date of the order, be delivered by the company to the registrar of companies, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company.

The court may by order at any time extend the time for the delivery of documents to the registrar under this section for such period as the court may think proper.

(7) If a company makes default in delivering to the registrar of companies any document required by this section to be delivered to him, the company shall be liable to a fine not exceeding ten pounds for every day during which it is in default.

This section embodies the effect of the Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), with the addition of the power of the court to extend the time for registration. "The Court" means

the court having jurisdiction to wind up the company (s. 285, p. 261, *post*); as to its meaning in relation to any particular company, see s. 131, p. 150, *post*.

The question whether a company registered under an earlier Act could take advantage of the provisions of the Act of 1890 without re-registration under the Act of 1862 (see *Re General Credit Co.*, [1891] W. N. 153; *Re Nitrophosphate and Odams Chemical Manure Co.*, [1893] W. N. 141; *Re Hong Kong and China Gas Co.*, [1898] W. N. 158; *Re Copiapo Mining Co.*, [1899] W. N. 25, and *Re Euphrates and Tigris Steam Navigation Co.*, [1904] 1 Ch. 360), has now been settled by the provisions of ss. 245, 246 of this Act (pp. 240, 241, *post*).

Besides the cases on the repealed Act, referred to in Rawlins and Macnaghten on Companies, pp. 146, 147, see *Re Cyclists' Touring Club*, [1907] 1 Ch. 269; *Re Trust and Agency Company of Australasia Ltd.*, [1908] W. N. 229; *Re Jewish Colonial Trust Ltd.*, [1908] 2 Ch. 287.

As in former cases, where the effect of an alteration of objects is to render the name of the company deceptive, the court requires that name to be changed: *Re Egyptian Delta Land and Investment Co.* (1907), 51 Sol. Jo. 211.

As to the special resolution, see s. 69, p. 84, *post*.

Articles of Association.

Registration of articles.

10.—(1) There may, in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

(2) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule to this Act.

(3) In the case of an unlimited company or a company limited by guarantee the articles, if the company has a share capital, must state the amount of share capital with which the company proposes to be registered.

(4) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles must state the

number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration.

This section is taken with merely verbal alterations from s. 14 of the Act of 1862.

In the case of a company limited by guarantee, it is to be noted that the statement as to capital (if any) must appear both in the memorandum and the articles (see s. 4 (2), p. 33, *ante*).

For Form of Memorandum and Articles of Association of a company limited by guarantee, and not having a share capital, see Form B in the Third Schedule, p. 309, *post*.

For Form of Memorandum and Articles of a similar company which has a share capital, see Form C, *ibid.*, p. 314, *post*.

For Form of Memorandum and Articles of an unlimited company having a share capital, see Form D, *ibid.*, p. 316, *post*.

No part of Table A, unless expressly adopted, applies to a guarantee or unlimited company, whereas in the case of a company limited by shares it applies unless expressly excluded. See s. 11, *infra*.

Application of Table A.

11. In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule to this Act, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

See s. 15 of the Act of 1862.

Table A is printed at p. 276, *post*.

As to the necessity of excluding Table A by clear words, see *Fisher* v. *Black and White Publishing Co.*, [1901] 1 Ch. 174.

If Table A is adopted in whole or in part, new articles may be substituted for it by special resolution.

If a company has registered with the Table A in Sched. I. to the Companies Act, 1862, or the Table A substituted by the Board of Trade in 1906, a change

in the form of Table A does not affect its regulations as contained in the table with which it registered.

Form, stamp, and signature of articles.

12. Articles must—

(*a*) be printed;

(*b*) be divided into paragraphs numbered consecutively;

(*c*) bear the same stamp as if they were contained in a deed; and

(*d*) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England and Ireland.

Paragraphs (*a*), (*c*), and (*d*) are from s. 16 of the Act of 1862; and paragraph (*b*) from s. 14 of the same Act.

The stamp required is 10*s.*; see note to s. 6, p. 35, *ante*.

As to signature by procuration, see *Re Whitney Partners* (1886), 32 Ch. D. 337.

Alteration of articles by special resolution.

13.—(1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles; and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution.

(2) The power of altering articles under this section shall, in the case of an unlimited company formed and registered under the Joint-Stock Companies Acts, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

Sub-sect. (1) expresses, more concisely, the effect of s. 50 of the Act of 1862. As to special resolutions, see s. 69 (2), p. 84, *post*. As to the information to be given to shareholders asked to pass the special resolutions, see

Normandy v. *Ind, Coope & Co.*, [1908] 1 Ch. 84. For decisions on the power to alter, see Rawlins and Macnaghten on Companies, pp. 265, 266.

Sub-sect. (2) is taken from the end of s. 176 of the Act of 1862.

Blunders in articles may be corrected under this section, but cannot be rectified under the general jurisdiction of the court, see *Evans* v. *Chapman* (1902), 86 L. T. 381.

As to altering rights of shareholders under this section, see *British Equitable Assurance Co.* v. *Baily*, [1906] A. C. 35.

A company cannot, whether as between itself and its shareholders or as between itself and strangers, contract itself out of the right to alter its articles: *Punt* v. *Symons & Co.*, [1903] 2 Ch. 506.

General Provisions.

Effect of memorandum and articles.

14.—(1) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member, his heirs, executors, and administrators, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company, and in England and Ireland be of the nature of a specialty debt.

Sub-sect. (1) replaces the latter part of s. 11 and a portion of s. 16 of the Act of 1862. It may be doubted whether the insertion of the words "his heirs, executors, and administrators" is still necessary; see Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 59.

As to effect of the provision as regards the memorandum, see *Ashbury Railway Carriage and Iron Co.* v. *Riche* (1875), L. R. 7 H. L. at p. 665.

As regards the articles, it is difficult to say how far

the articles constitute a contract binding on the company and its members; see *per* LINDLEY, M.R., in *Baring-Gould* v. *Sharpington Combined Pick and Shovel Syndicate*, [1899] 2 Ch. 80, and cases cited in Rawlins and Macnaghten on Companies, pp. 151, 152.

Sub-sect. (2) repeats the latter part of s. 16 of the Act of 1862 with verbal changes.

As to the reason for the insertion of the words making the debt a specialty debt, see *per* BACON, V.C., in *Buck* v. *Robson* (1870), L. R. 10 Eq. at p. 631; but the reason there given no longer exists, since the Administration of Estates Act, 1869 (32 & 33 Vict. c. 46).

Registration of memorandum and articles.

15. The memorandum and the articles (if any) shall be delivered to the registrar of companies for that part of the United Kingdom in which the registered office of the company is stated by the memorandum to be situate, and he shall retain and register them.

See first part of s. 17 of the Act of 1862, as modified by s. 174 (3) of the same Act.

As to the registration office, see s. 243, p. 228, *post*.

Effect of registration.

16.—(1) On the registration of the memorandum of a company the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

This section reproduces the earlier part of s. 18 of the Act of 1862 with the incorporation of s. 1 (3) of the Act of 1900.

Although "*capable* forthwith of exercising all the functions of an incorporated company," a company (unless a private company or a company registered before 1901 or a prospectusless company registered before July 1, 1908) may not commence business until the provisions of s. 87 (p. 105, *post*) have been complied with.

It should be noted that the "body corporate" is only a statutory corporation and has not all the capacity of a corporation at common law (*Ashbury Railway Carriage and Iron Co.* v. *Riche* (1875), L. R. 7 H. L. 653, 693; *Baroness Wenlock* v. *River Dee Commissioners* (1883), 36 Ch. D. 685*n*).

Conclusiveness of certificate of incorporation.

17.—(1) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.

(2) A statutory declaration by a solicitor of the High Court, and in Scotland by an enrolled law agent, engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

See s. 1 (1), (2) of the Act of 1900, as applied to Scotland by s. 34 (1) of the same Act. The misnomer "solicitor of the High Court" for "solicitor of the Supreme Court" (see Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 87), is retained.

As to the meaning of "conclusive," see Rawlins and Macnaghten on Companies, p. 155.

Copies of memorandum and articles to be given to members.

18.—(1) Every company shall send to every member, at his request, and on payment of one shilling or such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any).

(2) If a company makes default in complying with the requirements of this section, it shall be liable for each offence to a fine not exceeding one pound.

With the omission of unnecessary verbiage, this section reproduces s. 19 of the Act of 1862.

"Prescribed," as regards matters prescribed by companies, is not defined by the interpretation clause, s. 285, p. 269, *post*. A company may prescribe by its articles, or by the resolution of a general meeting, or by a resolution of its directors, where, as is usually the case, they are entrusted with the powers of the company.

Associations not for Profit.

Restriction on charitable and other companies holding land.

19. A company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or by its individual members, shall not, without the licence of the Board of Trade, hold more than two acres of land; but the Board may by licence empower any such company to hold lands in such quantity, and subject to such conditions, as the Board think fit.

See s. 21 of the Act of 1862.

For form of licence, see Form F in the Third Schedule, p. 321, *post*, where the marginal note erroneously refers to s. 20, instead of to this section.

As to the meaning of "science," see *Commissioners of Inland Revenue* v. *Forrest* (1890), 15 App. Cas. 334; and as to "charity," see *Commissioners of Income Tax* v. *Pemsell*, [1891] A. C. 531.

The companies referred to are generally registered under s. 20, *infra*, or the enactment which it replaces.

Power to dispense with "Limited" in name of charitable and other companies.

20.—(1) Where it is proved to the satisfaction of the Board of Trade that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity, or any other useful object, and intends to apply its

profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Board may by licence direct that the association be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.

(2) A licence by the Board of Trade under this section may be granted on such conditions and subject to such regulations as the Board think fit, and those conditions and regulations shall be binding on the association, and shall, if the Board so direct, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of sending lists of members and directors and managers to the registrar of companies.

(4) A licence under this section may at any time be revoked by the Board of Trade, and upon revocation the registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section:

Provided that before a licence is so revoked the Board shall give to the association notice in writing of their intention, and shall afford the association an opportunity of being heard in opposition to the revocation.

Sub-sects. (1)–(3) are taken from s. 23 of the Companies Act, 1867 (30 & 31 Vict. c. 131); sub-sect. (4) is from s. 42 of the Companies Act, 1907 (7 Edw. 7, c. 50).

The list of objects of an association within this section is expressed in slightly wider terms than that in the preceding section; but this is merely an adherence to the wording of the previous enactments. See cases cited in note to s. 19, p. 45, *ante*.

The grant of the licence is in the uncontrolled

discretion of the Board, and conditions may be attached to the grant (*Re St. Hilda's Incorporated College, Cheltenham*, [1901] 1 Ch. 556).

Companies limited by Guarantee.

Provision as to companies limited by guarantee.

21.—(1) In the case of a company limited by guarantee and not having a share capital, and registered on or after the first day of January, nineteen hundred and one, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee and registered on or after the first day of January, nineteen hundred and one, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

See s. 27 (2)–(4) of the Act of 1900, the effect of which is produced in altered language. The date, January 1, 1901, is the date when the Act of 1900 came into operation. The apparently meaningless words in s. 27 (2), referring to a company "limited by guarantee *or otherwise*," have been amended in the re-enactment.

Part II.

DISTRIBUTION AND REDUCTION OF SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED, AND UNLIMITED LIABILITY OF DIRECTORS.

Distribution of Share Capital.

Nature of shares.

22.—(1) The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate.

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

See s. 22 of the Act of 1862, and the decisions thereon cited in Rawlins and Macnaghten on Companies, pp. 160, 161.

Certificate of shares or stock.

23. A certificate, under the common seal of the company, specifying any shares or stock held by any member, shall be *primâ facie* evidence of the title of the member to the shares or stock.

This section repeats s. 31 of the Act of 1862, as to which see Rawlins and Macnaghten on Companies, pp. 172, 173.

As to the right of a shareholder to a "clean" certificate, without any statement on it that the company claims a lien on the shares, see *Re W. Key & Son, Ltd.*, [1902] 1 Ch. 467.

Definition of member.

24.—(1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

This reproduces, with verbal alterations, s. 23 of the Act of 1862. See Rawlins and Macnaghten on Companies, pp. 162–164.

As to the register of members, see s. 25, *infra*.

Although the section makes the entry on the register obligatory, that entry is not a condition precedent, in the case of subscribers of the memorandum, to their becoming members; *Nicol's Case* (1885), 29 Ch. D. 421, 445.

Register of members.

25.—(1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars:—

(i) The names and addresses, and the occupations, if any, of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(ii) The date at which each person was entered in the register as a member;

(iii) The date at which any person ceased to be a member.

(2) If a company fails to comply with this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

This section repeats (with unimportant alterations of language) s. 25 of the Act of 1862.

The company will not be allowed to place or retain upon the register a statement that it claims a lien on any shares; *Re W. Key & Son, Ltd.*, [1902] 1 Ch. 467. The company cannot insist on putting on the register anything except what is required by sub-sect. 1 (of s. 25) (*Re T. H. Saunders & Co.*, [1908] 1 Ch. 415, 423); and where two or more persons hold a share or shares jointly they can insist on having their names inserted in the register in such order as they choose (*ibid.*).

A colonial register under s. 34 is to be deemed to be part of the register of members, s. 35, p. 56, *post*.

Annual list of members and summary.

26.—(1) Every company having a share capital shall once at least in every year make a list of all persons who, on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the company.

(2) The list must state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars:—

(*a*) The amount of the share capital of the company, and the number of the shares into which it is divided;

(*b*) The number of shares taken from the commencement of the company up to the date of the return;

(*c*) The amount called up on each share;

(*d*) The total amount of calls received;

(*e*) The total amount of calls unpaid;

(*f*) The total amount of the sums (if any) paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, since the date of the last return;

(*g*) The total number of shares forfeited;

(*h*) The total amount of shares or stock for which share warrants are outstanding at the date of the return;

(*i*) The total amount of share warrants issued and surrendered respectively since the date of the last return;

(*k*) The number of shares or amount of stock comprised in each share warrant;

(*l*) The names and addresses of the persons who at the date of the return are the directors of the company, or occupy the position of directors, by whatever name called; and

(*m*) The total amount of debt due from the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies under this Act, or which would have been required so to be registered if created after the first day of July nineteen hundred and eight.

(3) The summary must also (except where the company is a private company) include a statement, made up to such date as may be specified in the statement, in the form of a balance sheet, audited by the company's auditors, and containing a summary of its share capital, its liabilities, and its assets, giving such particulars as will disclose the general nature of those liabilities and assets, and how the values of the fixed assets have been arrived at, but the balance sheet need not include a statement of profit and loss.

(4) The above list and summary must be contained in a separate part of the register of members, and must be completed within seven days after the fourteenth day aforesaid, and the company must forthwith forward to the registrar of companies a copy signed by the manager or by the secretary of the company.

(5) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

This section collects and co-ordinates the provisions on the subject of the annual return contained in or modified by the following enactments, namely :—ss. 26 and 27 of the Act of 1862, s. 32 of the Act of 1867, ss. 19 and 30 of the Act of 1900, and ss. 7, 20, and 21 of the Act of 1907.

The section also embodies certain requirements contained in the official Board of Trade Form E as amended by order Gazetted in 1901, which is now replaced by Form E in the Third Schedule to the Act; see p. 318, *post*.

The date July 1, 1908, is the date when the Act of 1907 came into operation.

As to private companies, see s. 121, p. 140, *post*.

Trusts not to be entered on register.

27. No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies registered in England or Ireland.

This section repeats s. 30 of the Act of 1862, as to which see Rawlins and Macnaghten on Companies, pp. 170, 171.

When the executors of a deceased member are themselves placed on the register as members, the company has no right to place against their names the words "Executors of ——," or any statement which qualifies the entry of their names so as to show that they do not hold as absolute owners; *Re T. H. Saunders & Co.*, [1908] 1 Ch. 415, 423.

Nor can a statement be entered against the name of any member that the company claims a lien on his shares, or, indeed, anything except the name, address, and occupation of the member, the number of shares held by him, and the date of entry, *ibid.*; *Re W. Key & Son, Ltd.*, [1902] 1 Ch. 467.

Registration of transfer at request of transferor.

28. On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

This is a re-enactment of s. 26 of the Act of 1867. Compare s. 32, p. 54, *post.*

As to the register of members, see s. 25, p. 49, *ante.*

Transfer by personal representative.

29. A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

See s. 24 of the Act of 1862; as to the effect of a transfer under this section as against creditors in the bankruptcy of a deceased member, see *Re London and Provincial Telegraph Co.* (1870), L. R. 9 Eq. 653.

Inspection of register of members.

30.—(1) The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company, and, except when closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member gratis, and to the inspection of any other person on payment of one shilling, or such less sum as the company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Act, or any part thereof, on payment of sixpence, or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied.

(3) If any inspection or copy required under this section is refused, the company shall be liable for each refusal to a fine not exceeding two pounds, and to a further fine not exceeding two pounds for every day during which the refusal continues, and every director and manager of the company who knowingly authorises or permits the refusal shall be liable to the like penalty; and, as respects companies

registered in England or Ireland, any judge of the High Court, or the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, may by order compel an immediate inspection of the register.

This section reproduces s. 32 of the Act of 1862 as amended in minor details by s. 50 and Sched. III. of the Act of 1907, with slight modifications in the concluding sentence as to the judges who may make the order.

As to the register of members, see s. 25, p. 49, *ante*. The words "any judge of the High Court" are substituted for "any judge sitting in chambers" in accordance with the modern practice to regulate such matters by Rules.

As to the stannaries jurisdiction, see note to s. 1, p. 31, *ante*.

As to closing the register, see s. 31, *infra*.

The section does not apply where a company is in liquidation (*Re Kent Coalfields Syndicate*, [1898] 1 Q. B. 754).

Power to close register.

31. A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each year.

This is from s. 33 of the Act of 1862.

Power of court to rectify register.

32.—(1) If—

(*a*) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or

(*b*) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.

(2) The application may be made, as respects companies registered in England or Ireland, by

motion in the High Court, or by application to a judge of the High Court sitting in chambers, or by application to the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, and as respects companies registered in Scotland, by summary petition to the Court of Session, or in such other manner as the said courts may respectively direct; and the court may either refuse the application, or may order rectification of the register, and payment by the company of any damages sustained by any party aggrieved.

(3) On any application under this section the court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Act to send a list of its members to the registrar of companies, the court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar.

Sub-sects. (1)–(3) are taken from s. 35, and sub-sect. (4) from s. 36 of the Act of 1862.

The express power for the court to order payment of costs is omitted, such power being conferred in general terms by the Judicature Act, 1890 (53 & 54 Vict. c. 44), s. 5; see *Re Fisher*, [1894] 1 Ch. 450.

The provision that the court may direct an issue to be tried is also omitted; see R. S. C. 1883, Ords. XXXIII, XXXIV.

See note as to stannaries jurisdiction, p. 31, *ante*.

For decisions on the old s. 35, see Rawlins and Macnaghten on Companies, pp. 176–181.

As to rectification on the application of a transferee where a winding-up has commenced after the date of his transfer, see *Re Sussex Brick Co.*, [1904] 1 Ch. 598.

Register to be evidence.

33. The register of members shall be *primâ facie* evidence of any matters by this Act directed or authorised to be inserted therein.

This section is identical with s. 37 of the Act of 1862.

Power for company to keep colonial register.

34.—(1) A company having a share capital, whose objects comprise the transaction of business in a colony, may, if so authorised by its articles, cause to be kept in any colony in which it transacts business a branch register of members resident in that colony (in this Act called a colonial register).

(2) The company shall give to the registrar of companies notice of the situation of the office where any colonial register is kept, and of any change in its situation, and of the discontinuance of the office in the event of its being discontinued.

(3) For the purpose of the provisions of this Act relating to colonial registers the term "colony" includes British India and the Commonwealth of Australia.

Sub-sects. (1) and (2) reproduce s. 3 (1), (2) of the Companies (Colonial Registers) Act, 1883 (46 & 47 Vict. c. 30), with the difference that apparently only one branch register in each colony is now authorised.

For the area included in "British India," see Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 18 (4).

The express inclusion of the Commonwealth of Australia was enacted in s. 43 of the Act of 1907; and compare s. 18 (3) of the Interpretation Act, 1889.

Regulations as to colonial register.

35.—(1) A colonial register shall be deemed to be part of the company's register of members (in this and the next following section called the principal register).

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district wherein the colonial register is kept, and that any competent court in the colony may exercise the same jurisdiction of rectifying the register as is under this Act exerciseable by

the High Court, and that the offences of refusing inspection or copies of a colonial register, and of authorising or permitting the refusal may be prosecuted summarily before any tribunal in the colony having summary criminal jurisdiction.

(3) The company shall transmit to its registered office a copy of every entry in its colonial register as soon as may be after the entry is made; and shall cause to be kept at its registered office, duly entered up from time to time, a duplicate of its colonial register, and the duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a colonial register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a colonial register shall, during the continuance of that registration, be registered in any other register.

(5) The company may discontinue to keep any colonial register, and thereupon all entries in that register shall be transferred to some other colonial register kept by the company in the same colony, or to the principal register.

(6) Subject to the provisions of this Act, any company may, by its articles, make such provisions as it may think fit respecting the keeping of colonial registers.

This section reproduces sub-sects. (3)–(6) and (8) of s. 3 of the Companies (Colonial Registers) Act, 1883, with slight verbal changes.

As to the principal register, see s. 25, p. 49, *ante*.

Stamp duties in case of shares registered in colonial registers.

36. In relation to stamp duties the following provisions shall have effect:—

(*a*) An instrument of transfer of a share registered in a colonial register shall be deemed to be a transfer of property situate out of the United Kingdom, and, unless executed in any part of the United Kingdom, shall be exempt from British stamp duty;

(*b*) On the death of a member registered in a colonial register, the shares of the deceased member shall, if he died domiciled in the United Kingdom, but not otherwise, be deemed, so far as relates to British duties, to be part of his estate and effects situate in the United Kingdom for or in respect of which probate or letters of administration is or are to be granted, or whereof an inventory is to be exhibited and recorded, in like manner as if he were registered in the principal register.

See s. 3 (7) of the Companies (Colonial Registers) Act, 1883, as amended by the Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 18.

As to the meaning of "the principal register," see s. 35 (1), *ante*.

Issue and effect of share warrants to bearer.

37.—(1) A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant, in this Act termed a share warrant.

(2) A share warrant shall entitle the bearer thereof to the shares or stock therein specified, and the shares or stock may be transferred by delivery of the warrant.

(3) The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled.

(4) The bearer of a share warrant may, if the articles of the company so provide, be deemed to

be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles; except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company, in cases where such a qualification is required by the articles.

(5) On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely :—

(i) The fact of the issue of the warrant;

(ii) A statement of the shares or stock included in the warrant, distinguishing each share by its number; and

(iii) The date of the issue of the warrant.

(6) Until the warrant is surrendered, the above particulars shall be deemed to be the particulars required by this Act to be entered in the register of members; and, on the surrender, the date of the surrender must be entered as if it were the date at which a person ceased to be a member.

See ss. 27–31 of the Companies Act, 1867 (30 & 31 Vict. c. 131). The last words of sub-sect. (6) refer to the provision contained in s. 25 (1) (iii), p. 49, *ante*.

In sub-sect. (4) "such a qualification" apparently means a qualification by the holding of shares and stock. Where the articles provided for qualification by the holding of share warrants, the validity of the provision was not apparently questioned (*Pearson's Case* (1877), 5 Ch. D., at p. 337).

As to a share warrant being a negotiable instrument, see *Webb, Hale & Co.* v. *Alexandria Water Co.* (1905), 21 T. L. R. 572, and compare *Stern* v. *Reg.*, [1896] 1 Q. B. 211.

Forgery, personation, unlawfully engraving plates, &c.

38.—(1) If any person—

(i) with intent to defraud, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document

purporting to be a share warrant or coupon, issued in pursuance of this Act; or by means of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, demands or endeavours to obtain or receive any share or interest in any company under this Act, or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon, or document to be forged or altered; or

(ii) falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner,

he shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years.

(2) If any person without lawful authority or excuse, proof whereof shall lie on him, engraves or makes on any plate, wood, stone, or other material any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular company in pursuance of this Act, or to be a blank share warrant or coupon so issued or made, or to be a part of such a share warrant or coupon, or uses any such plate, wood, stone, or other material for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone, or other material, he shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years.

This section replaces the Companies Act, 1867, ss. 34–36 ; and see, as to sub-sect. (2), Penal Servitude Act, 1891 (54 & 55 Vict. c. 67), s. 1.

Power of company to arrange for different amounts being paid on shares.

39. A company, if so authorised by its articles, may do any one or more of the following things ; namely—

(1) Make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares :

(2) Accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up :

(3) Pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

This section replaces s. 24 of the Act of 1867 with slight verbal changes, particularly in sub-sect. (2), the last sentence of which for the old provision it was substituted being very obscure.

As to the duty of directors with regard to making calls fairly, see *Alexander* v. *Automatic Telephone Co.*, [1900] 2 Ch. 56.

As to the form of article required in case of sub-sect. (2), see clause (17) of Table A, p. 280, *post.*

As to paying dividends in proportion to the shares where the articles do not specially provide for a different method of distribution ; see *Oakbank Oil Co.* v. *Crum* (1882), 8 App. Cas. 65.

Power to return accumulated profits in reduction of paid-up share capital.

40.—(1) When a company has accumulated a sum of undivided profits, which with the sanction of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, it may, by special resolution, return the same, or any part thereof, to the shareholders in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount.

(2) The resolution shall not take effect until a memorandum, showing the particulars required by

this Act in the case of a reduction of share capital, has been produced to and registered by the registrar of companies, but the other provisions of this Act with respect to reduction of share capital shall not apply to a reduction of paid-up share capital under this section.

(3) On a reduction of paid-up capital in pursuance of this section any shareholder, or any one or more of several joint shareholders, may within one month after the passing of the resolution for the reduction, require the company to retain, and the company shall retain accordingly, the whole of the money actually paid on the shares held by him either alone or jointly with any other person, which, in consequence of the reduction, would otherwise be returned to him or them, and thereupon those shares shall, as regards the payment of dividend, be deemed to be paid up to the same extent only as the shares on which payment has been accepted by the shareholders in reduction of paid-up capital, and the company shall invest and keep invested the money so retained in such securities authorised for investment by trustees as the company may determine, and on the money so invested or on so much thereof as from time to time exceeds the amount of calls subsequently made on the shares in respect of which it has been retained, the company shall pay the interest received from time to time on the securities.

(4) The amount retained and invested shall be held to represent the future calls which may be made to replace the share capital so reduced on those shares, whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made produces more or less than the amount of the call.

(5) On a reduction of paid-up share capital in pursuance of this section, the powers vested in the directors of making calls on shareholders in respect of the amount unpaid on their shares shall extend to the amount of the unpaid share capital as augmented by the reduction.

(6) After any reduction of share capital under

this section the company shall specify in the annual list of members required by this Act the amounts retained at the request of any of the shareholders in pursuance of this section, and shall specify in the statements of account laid before any general meeting of the company the amount of undivided profits returned in reduction of paid-up share capital under this section.

This section replaces ss. 3–6 of the Companies Act, 1880 (43 Vict. c. 19), without material alteration.

As to special resolution, see s. 69, p. 84, *post*.

For the other provisions of the Act with respect to reduction of capital, see ss. 46–56, pp. 67–74, *post*.

The provisions which this section replaces have not been much acted on, as any accumulated profits may be and are promptly distributed as dividends without the payment being treated as a repayment of paid-up capital.

The special resolution referred to in sub-sect. (1) cannot have a retrospective or prospective effect, but can only be made applicable to the profits of the year, as the shareholders passing the resolution might otherwise not be the same as those to whom the return is made, *Re Piercy*, [1907] 1 Ch. 289, 293.

Power of company limited by shares to alter its share capital.

41.—(1) A company limited by shares, if so authorised by its articles, may alter the conditions of its memorandum as follows (that is to say), it may—

(*a*) increase its share capital by the issue of new shares of such amount as it thinks expedient;

(*b*) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(*c*) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;

(*d*) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as

it was in the case of the share from which the reduced share is derived;

(*c*) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section with respect to subdivision of shares must be exercised by special resolution.

(3) Where any alteration has been made under this section in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

If a company makes default in complying with this provision it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(4) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

This section reproduces the provisions formerly embodied in s. 12 of the Act of 1862, ss. 21, 22 of the Act of 1867, s. 5 of the Act of 1877, and s. 29 of the Act of 1900. It is to be noted that the section, following the earlier enactments, only requires the alteration to be by special resolution in the case of a subdivision of shares. This requirement occurred in s. 21 of the Act of 1867, but not in any other of the enactments consolidated in this section.

Kekewich, J., held that articles requiring a greater majority than that prescribed by statute were *ultra vires*, and the Court of Appeal evaded a decision on this point, *Ayre* v. *Skelsey's Adamant Cement Co.*, [1905] 21 T. L. R. 464. But clauses (41) and (44) of Table A (pp. 285, 286, *post*) require a special resolution for a consolidation of capital, and an extraordinary resolution

for an increase of capital, which are not required by the Act itself.

Quære whether any notice of a subdivision of shares, other than that required by s. 26 (2) (a), p. 50, *ante*, and s. 70, p. 86, *post*, need be given to the registrar; see ss. 42–44, *infra*.

Notice to registrar of consolidation of share capital, conversion of shares into stock, &c.

42. Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares, or converted any of its shares into stock, or reconverted stock into shares, it shall give notice to the registrar of companies of the consolidation, division, conversion, or reconversion specifying the shares consolidated, divided or converted, or the stock reconverted.

See s. 28 of the Act of 1862, as amended by s. 50 and Schedule III. of the Act of 1907.

Effect of conversion of shares into stock.

43. Where a company having a share capital has converted any of its shares into stock, and given notice of the conversion to the registrar of companies, all the provisions of this Act which are applicable to shares only shall cease as to so much of the share capital as is converted into stock; and the register of members of the company, and the list of members to be forwarded to the registrar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Act.

This is from s. 29 of the Act of 1862.
See s. 26, p. 50, *ante*, as to the list of members.

Notice of increase of share capital or of members.

44.—(1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall give to the registrar of companies, in the case of an increase of share capital, within fifteen days after the passing, or in the case of a special resolution the confirmation, of the resolution authorising the increase, and in the case of an increase of members within fifteen days

after the increase was resolved on or took place, notice of the increase of capital or members, and the registrar shall record the increase.

(2) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

This section reproduces s. 34 of the Act of 1862, with the addition of the provision as to reckoning the fifteen days from the confirmation and not the passing of a special resolution.

Reorganisation of share capital.

45.—(1) A company limited by shares may, by special resolution confirmed by an order of the court, modify the conditions contained in its memorandum so as to reorganise its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes:

Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by a resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class.

(2) Where an order is made under this section an office copy thereof shall be filed with the registrar of companies within seven days after the making of the order, or within such further time as the court may allow, and the resolution shall not take effect until such a copy has been so filed.

This section replaces s. 39 of the Act of 1907 (which was new) with merely verbal alterations and the addition of the words enabling the court to extend the time for filing the order.

For the manner in which a special resolution is required to be confirmed, see s. 69, p. 84, *post*.

Reduction of Share Capital.

Special resolution for reduction of share capital.

46.—(1) Subject to confirmation by the court, a company limited by shares, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power) may—

(*a*) Extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

(*b*) Either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or

(*c*) Either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company,

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Act called a resolution for reducing share capital.

Sub-sect. (1) replaces s. 9 of the Act of 1867, and s. 3 of the Act of 1877; but the language is altered so as to give effect to the apparent intention of the amendment contained in the later section, as explained in *British and American Trustee and Finance Corporation* v. *Couper*, [1894] A. C. 399; and see *Poole* v. *National Bank of China*, [1907] A. C. 229.

Sub-sect. (2) is new, but merely explanatory.

As to the meaning of "court" for the purpose of this section, see s. 285, p. 270, *post*, and s. 131, p. 150, *post;* and see *Re Portsmouth and District Vacuum Cleaner Co.*, [1908] W. N. 203.

The power to reduce must be given by the articles, not by the memorandum, *Re Dexine Patent Packing and Rubber Co.* (1903), 88 L. T. 791. If the articles do not give the power, they must be altered by special resolution before an attempt is made to reduce the capital.

Capital which can only be called up in the event of and for the purposes of winding up (see ss. 58, 59, p. 76, *post*) may be reduced (*Re Midland Railway Carriage and Wagon Co.* (1907), 23 T. L. R. 661). And the court has confirmed the cancellation of capital returned to the shareholders by a company formed under 7 & 8 Vict. c. 110, and subsequently registered under the Act of 1862 (*ibid.*).

Even before the Consolidation Act, the notion that the words of the Act of 1877 only extended to the reductions therein expressly mentioned (see *Anglo-French Exploration Co.*, [1902] 2 Ch. 845) had been exploded in *Poole* v. *National Bank of China*, *supra*. And see the criticism in the same case, of *Re Barrow Haematite Steel Co.*, [1901] 2 Ch. 746.

As to apportioning a loss of capital between capital and reserve, see *Re Hoare & Co.*, [1904] 2 Ch. 208; *Re Rowland and Marwood's Steamship Co.*, [1907] 51 Sol. Jo. 131.

Where the reduction is by returning paid-up excess capital it is not the proper practice to first make the order confirming the reduction, and stand over the petition until the capital has been actually returned, and then, on proof of this, to post-date the order and approve the minute; the order should be made and the minute approved before the capital is returned (*Re Lees Brook Spinning Co.*, [1906] 2 Ch. 394; *Re Anglo-Italian Bank*, [1906] W. N. 202; *Re General Industrial Developments Syndicate*, [1907] W. N. 23, in which different judges declined to follow, *Re Calgary and Edmonton Land Co.*, [1906] 1 Ch. 141).

A reduction scheme is not necessarily unfair because it involves the alteration of voting rights and priorities of different classes of shareholders (*Re Samuel Allsopp and Sons, Ltd.* (1903), 51 W. R. 644). As to what is a fair reduction in the case of ordinary and deferred shares, see *Re Credit Assurance and Guarantee Corporation*, [1902] 2 Ch. 601.

A surrender of shares, whether paid-up or not, is a reduction which requires the confirmation of the court, unless it is made under circumstances which would justify a forfeiture of the shares, *Bellerby* v. *Rowland and Marwood's Steamship Co.*, [1902] 2 Ch. 14.

Application to court for

47. Where a company has passed and confirmed a resolution for reducing share capital it may apply

by petition to the court for an order confirming the reduction. confirming order.

See first part of s. 11 of the Act of 1867. The words "and confirmed" are an addition.

As to the court to which the application should be made, see ss. 285, 131, pp. 270, 150, *post.*

As to facts to be proved with reference to creditors before the court will make an order confirming the reduction, see s. 50, p. 71, *post.*

But the court does not always require inquiries as to creditors. Where the confirmation asked for is of a reduction of capital which has been lost or is unrepresented by available assets, it is not usual to make the inquiries.

48. On and from the confirmation by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then on and from the presentation of the petition for confirming the reduction, the company shall add to its name, until such date as the court may fix, the words "and reduced," as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company: Addition to name of company of "and reduced."

Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced."

This section is taken from s. 10 of the Act of 1867 and s. 4 of the Act of 1877.

The court has not hitherto shown a readiness to dispense altogether with the addition of the words "and reduced;" see *Re Sumatra Tobacco Co.*, [1898] W. N. 80.

As to cases not involving the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, see *Re Eastern and Australian Steamship Co.* (1893), 68 L. T. 321.

Objections by creditors, and settlement of list of objecting creditors.

49.—(1) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the court so directs, every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.

(2) The court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.

(3) Where a creditor entered on the list whose debt or claim is not discharged or determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount; (that is to say,)—

(i) If the company admits the full amount of his debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

(ii) If the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

See ss. 13, 14 of the Act of 1867 as amended by s. 4 of the Act of 1877.

As to debts and claims admissible in proof against a company in winding up, see s. 206, p. 207, *post*.

When the reduction involves the diminution of liability, or the return of paid-up capital, the list must be settled, even in the face of evidence that there are no creditors (*Re Lamson Store Service Co.*, [1895] 2 Ch. 726).

The practice with reference to confirming reductions of capital under the old Acts was regulated by a general order of the Court of Chancery made in 1868. No fresh rules were made after the passing of the Act of 1877, and the order of 1868 was inappropriate to the changed circumstances under which in later years reductions of capital were made. A new set of rules with reference to this practice under the Consolidation Act has been prepared, and will shortly be published.

Order confirming reduction.

50. The court, if satisfied, with respect to every creditor of the company who under this Act is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

From s. 11 of the Act of 1867.

The power of the court is discretionary. As to imposing conditions, see cases cited in Rawlins and Macnaghten on Companies, p. 133.

Registration of order and minute of reduction.

51.—(1) The registrar of companies on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the court), showing with respect to the share capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) On the registration, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the court may direct.

(4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

See ss. 9, 15 of the Act of 1867, and the last sentence of s. 4 of the Act of 1877.

The modern practice in framing minutes is to state the former capital, the amount to which it has been reduced, of what the reduced capital consists, how far it is issued and paid up, how far it is unissued, and the numbers borne by the shares.

As to the effect of the certificate, see *Ladies' Dress Association* v. *Pulbrook*, [1900] 2 Q. B. 376; *Re Walker and Smith, Ltd.* (1903), 72 L. J. Ch. 572.

Minute to form part of memorandum.

52.—(1) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein; and must be embodied in every copy of the memorandum issued after its registration.

(2) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

See ss. 16, 18 of the Act of 1867.

Liability of members in respect of reduced shares.

53. A member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid, or (as

the case may be) the reduced amount, if any, which is to be deemed to have been paid, on the share and the amount of the share as fixed by the minute:

Provided that if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the court, to pay the amount of his debt or claim, then—

(i) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration; and

(ii) if the company is wound up, the court, on the application of any such creditor, and proof of his ignorance as aforesaid may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding up.

Nothing in this section shall affect the rights of the contributories among themselves.

The first paragraph reproduces the latter part of s. 16 of the Act of 1867 as amended by Schedule III. of the Act of 1907; the remainder of the section is taken from s. 17 of the Act of 1867 with merely verbal alteration.

As to when a company is "unable" to pay a debt, see s. 130, p. 149, *post*.

For the liability of ordinary contributories in a winding up, see s. 123, p. 143, *post*.

Penalty on concealment of name of creditor.

54. If any director, manager, or officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of a misdemeanor.

This section replaces s. 19 of the Act of 1867.

Publication of reasons for reduction.

55. In any case of reduction of share capital, the court may require the company to publish as the court directs the reasons for reduction, or such other information in regard thereto as the court may think expedient with a view to give proper information to the public, and, if the court thinks fit, the causes which led to the reduction.

This section is taken with trifling alterations from s. 4 of the Act of 1877. The power given by the section has seldom been exercised.

Increase and reduction of share capital in case of a company limited by guarantee having a share capital.

56. A company limited by guarantee and registered on or after the first day of January nineteen hundred and one, may, if it has a share capital, and is so authorised by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Act.

The date Jan. 1, 1901, is the date of commencement of the Act of 1900, and the section was inserted to give effect to the presumed intention of the words in parenthesis in s. 27 (1) of the Act of 1900.

In the case of a guarantee company registered before Jan. 1, 1901, there was no necessity to state the amount of share capital in the memorandum, but it had to be stated in the articles, and the articles might be altered by special resolution.

Registration of Unlimited Company as Limited.

Registration of unlimited company as limited.

57.—(1) Subject to the provisions of this section, any company registered as unlimited may register under this Act as limited, or any company already registered as a limited company, may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect any debts, liabilities, obligations, or contracts incurred or entered into by, to, with, or on behalf of the company before the registration, and those debts, liabilities, obligations, and contracts may be enforced in manner provided by Part VII. of this Act in the case of a company registered in pursuance of that Part.

(2) On registration in pursuance of this section the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts of Parliament from those under which the company is registered as a limited company.

See Companies Act, 1879 (42 & 43 Vict. c. 76), ss. 4, 9.

For Part VII. ("Companies authorised to register under this Act") see ss. 249–266, pp. 242–254, *et seq.*, *post*.

The provision enabling registered limited companies to re-register would appear to be unnecessary, but it is only repeated from the Act of 1879. A company registered under the Act of 1862 cannot be registered under Part VII. (see s. 249, p. 242, *post*), and no useful object seems to be obtainable by registering it, if a limited company, under s. 57.

Power of unlimited company to

58. An unlimited company having a share capital may, by its resolution for registration as a limited

provide for reserve share capital on re-registration.

company in pursuance of this Act, do either or both of the following things, namely:—

(*a*) Increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;

(*b*) Provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

See s. 5 of the Act of 1879. The words "or both" in the first sentence embody the amendment contained in Schedule III. of the Act of 1907.

Presumably the "increased capital" referred to in paragraph (*a*) means the amount by which the original capital has been increased; but such is not the natural meaning of the words.

As to the provisions embodied in this and the following section, see *Re Mayfair Property Co.*, [1898] 2 Ch. 28, 36.

Reserve Liability of Limited Company.

Reserve liability of limited company.

59. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

This section reproduces the last paragraph of s. 5 of the Act of 1879 with slight verbal alterations.

See *Re Mayfair Property Co.*, *supra*; *Re Bristol Joint-Stock Bank* (1890), 44 Ch. D. 703, 712–714.

Unlimited Liability of Directors.

Limited company may have direc-

60.—(1) In a limited company the liability of the directors or managers, or of the managing

director, may, if so provided by the memorandum, be unlimited. tors with unlimited liability.

(2) In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company (if any), and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters, directors, managers, and secretary (if any) of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) If any director, manager, or proposer makes default in adding such a statement, or if any promoter, director, manager, or secretary makes default in giving such a notice, he shall be liable to a fine not exceeding one hundred pounds, and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

See ss. 4, 7 of the Act of 1867.

The provision in sub-sect. (2) requiring a statement as to unlimited liability to be added to the proposal for election does not seem to have any operation in the case of a proposal which is not in writing.

61.—(1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors, or managers, or of any managing director. Special resolution of limited company making liability of directors unlimited.

(2) Upon the confirmation of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum; and a copy thereof shall be embodied in or annexed to every copy of the memorandum issued after the confirmation of the resolution.

(3) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding one pound for each

copy in respect of which default is made; and every director or manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

See s. 8 of the Act of 1867.

It is doubtful whether any companies have acted on this provision, see p. 20, *ante*.

Part III.

Management and Administration.

Office and Name.

Registered office of company.

62.—(1) Every company shall have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of any change therein, shall be given to the registrar of companies, who shall record the same.

(3) If a company carries on business without complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which it so carries on business.

This section reproduces in a clearer form ss. 39 and 40 of the Act of 1862.

Publication of name by a limited company.

63.—(1) Every limited company—

(*a*) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible:

(*b*) shall have its name engraven in legible characters on its seal:

(*c*) shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders

for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

(2) If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a fine not exceeding five pounds for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(3) If any director, manager, or officer of a limited company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any notice, advertisement, or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

See ss. 41, 42 of the Act of 1862.

The section only applies to companies limited by shares or by guarantee.

Meetings and Proceedings.

Annual general meeting.

64.—(1) A general meeting of every company shall be held once at the least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting, and,

if not so held, the company and every director, manager, secretary, and other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds.

(2) When default has been made in holding a meeting of the company in accordance with the provisions of this section, the court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.

This section reproduces the provisions substituted by s. 24 (1), (2) of the Act of 1907 for s. 49 of the Act of 1862.

First statutory meeting of company.

65.—(1) Every company limited by shares and registered on or after the first day of January nineteen hundred and one shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company which shall be called the statutory meeting.

(2) The directors shall, at least seven days before the day on which the meeting is held, forward a report (in this Act called "the statutory report") to every member of the company and to every other person entitled under this Act to receive it.

(3) The statutory report shall be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, and shall state—

(*a*) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

(*b*) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;

(*c*) an abstract of the receipts of the company on account of its capital, whether from shares

or debentures, and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

(*d*) the names, addresses, and descriptions of the directors, auditors (if any), managers (if any), and secretary of the company; and

(*e*) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

(5) The directors shall cause a copy of the statutory report, certified as by this section required, to be filed with the registrar of companies forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time,

and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) If a petition is presented to the court in manner provided by Part IV. of this Act for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.

(10) The provisions of this section as to the forwarding and filing of the statutory report shall not apply in the case of a private company.

This section is based on s. 12 of the Act of 1900, as amended by ss. 22, 23 of the Act of 1907.

The date, Jan. 1, 1901, is the date of commencement of the Act of 1900.

As to the date at which a company is entitled to commence business, see s. 87, p. 105, *post*. As to other persons, besides members, who are entitled to receive reports, see s. 114, p. 135, *post*.

As to the company's inability to vary contracts before the statutory meeting, see s. 83, p. 99, *post*.

As to sub-sect. (9), see s. 141 (2), p. 159, *post*.

For the meaning of "private company," see s. 121, p. 140, *post*.

Convening of extraordinary general meeting on requisition.

66.—(1) Notwithstanding anything in the articles of a company, the directors of a company shall, on the requisition of the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not proceed to cause a

meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of the deposit.

(4) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution and, if thought fit, of confirming it as a special resolution; and, if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.

(5) Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

See s. 13 of the Act of 1900. As to the case of joint holders of a share or shares, see *Patent Wood Keg Syndicate* v. *Pears*, [1906] W. N. 164.

After the requisition has been deposited, the meeting can only, within the next twenty-one days, be called by the directors acting as a board, and cannot be called by the secretary on his own responsibility: *Re State of Wyoming Syndicate*, [1901] 2 Ch. 431.

Provisions as to meetings and votes.

67. In default of, and subject to, any regulations in the articles—

(i) A meeting of a company may be called by seven days' notice in writing, served on every member in manner in which notices are required to be served by Table A. in the First Schedule to this Act:

(ii) Five members may call a meeting:

(iii) Any person elected by the members present at a meeting may be chairman thereof:

(iv) Every member shall have one vote.

This section replaces s. 52 of the Act of 1862, with verbal changes.

For the manner of serving notices, see Table A (110)–(113), p. 300, *post.*

Representation of companies at meetings of other companies of which they are members.

68. A company which is a member of another company may, by resolution of the directors, authorise any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company.

This section replaces s. 24 (3) of the Act of 1907, with slight verbal alterations. Prior to the Act of 1907, articles of association generally gave companies holding shares in another company power to vote by proxy at the meetings of the latter. This form is still retained in Table A, clause (65), p. 290, *post.* An authority under s. 68 gives a larger power than the mere right to vote; it enables the holders to join in demanding a poll, to address the meeting, move an amendment etc.

Definitions of extraordinary and special resolution.

69.—(1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(2) A resolution shall be a special resolution when it has been—

(*a*) passed in manner required for the passing of an extraordinary resolution; and

(*b*) confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting.

(3) At any meeting at which an extraordinary

resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed a poll may be demanded, if demanded by three persons for the time being entitled according to the articles to vote, unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the articles.

(5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by the articles of the company.

(6) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles.

This section reproduces s. 51 of the Act of 1862, as amended by ss. 25 and 45 of the Act of 1907.

For decisions on the earlier enactment, see Rawlins and Macnaghten on Companies, pp. 267, 268.

Articles of association may be so framed as to enable notice of both the meetings required for a special resolution to be given by one document (*Re North of England Steamship Co.*, [1905] 2 Ch. 15). As to the necessity of giving full information in notices, see *Normandy* v. *Ind, Coope & Co.*, [1908] 1 Ch. 84.

At the first meeting to pass a special resolution it is not necessary that the resolution should be in the exact terms of the notice given, and the resolution proposed may be amended to a certain extent, *e.g.* by making the resolution actually carried resolve on something less than what is proposed in the resolution referred to in the notice (*Torbock* v. *Lord Westbury*, [1902] 2 Ch. 871).

But at the second meeting, to confirm the resolution, no amendment on the resolution passed at the first meeting can be moved; the resolution must be either confirmed or rejected (*Wall* v. *London and Northern Assets Corporation*, [1898] 2 Ch. 469).

As to the conclusiveness of the chairman's declaration, see *Re Hadleigh Castle Gold Mines, Ltd.*, [1900] 2 Ch. 419; *Arnot* v. *United African Lands, Ltd.*, [1901] 1 Ch. 518. But the declaration is not conclusive when it shows on the face of it that the resolution has not been passed by the required majority (*Re Caratal (New) Mines, Ltd.*, [1902] 2 Ch. 498).

The Act of 1862 required the demand of a poll to be made by at least five persons (see s. 51 of that Act). If nothing is said in the articles, a poll may now be demanded by three persons entitled to vote.

Registration and copies of special resolutions.

70.—(1) A copy of every special and extraordinary resolution shall within fifteen days from the confirmation of the special resolution, or from the passing of the extraordinary resolution, as the case may be, be printed and forwarded to the registrar of companies, who shall record the same.

(2) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the confirmation of the resolution.

(3) Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member at his request, on payment of one shilling or such less sum as the company may direct.

(4) If a company makes default in printing or forwarding a copy of a special or extraordinary resolution to the registrar it shall be liable to a fine not exceeding two pounds for every day during which the default continues.

(5) If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this section a copy of a special resolution, it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(6) Every director and manager of a company who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

This section re-enacts the provisions of ss. 53 and 54 of the Act of 1862, as amended by s. 45 of the Act of 1907.

Minutes of proceedings of meetings and directors.

71.—(1) Every company shall cause minutes of all proceedings of general meetings and (where there are directors or managers) of its directors or managers to be entered in books kept for that purpose.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers, or liquidators, shall be deemed to be valid.

This section is taken from s. 67 of the Act of 1862; for decisions on which, see Rawlins and Macnaghten on Companies, p. 282.

Appointment, Qualification, etc., of Directors.

Restrictions on appointment or advertisement of director.

72.—(1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company, or in any statement in lieu of prospectus filed by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the filing of the

statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorised in writing—

(i) Signed and filed with the registrar of companies a consent in writing to act as such director; and

(ii) Either signed the memorandum for a number of shares not less than his qualification (if any), or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any).

(2) On the application for registration of the memorandum and articles of a company the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding fifty pounds.

(3) This section shall not apply to a private company nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

This section replaces s. 2 of the Act of 1900, as extended by s. 1 and Schedule II. of the Act of 1907 to prospectusless companies, as to which see s. 82, p. 98, *post*.

See cases cited in Rawlins and Macnaghten on Companies, pp. 198–203.

As to "private" companies, see s. 121, p. 140, *post*.

Qualification of director.

73.—(1) Without prejudice to the restrictions imposed by the last foregoing section, it shall be the duty of every director who is by the regulations of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the regulations of the company.

(2) The office of director of a company shall be vacated, if the director does not within two months

from the date of his appointment, or within such shorter time as may be fixed by the regulations of the company, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification; and a person vacating office under this section shall be incapable of being reappointed director of the company until he has obtained his qualification.

(3) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding five pounds for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director.

See s. 3 of the Act of 1900 and s. 34 of the Act of 1907; and compare Rawlins and Macnaghten on Companies, pp. 204–207.

As to the obligation on a director to acquire his qualification, and as to the result of the company increasing the amount required to qualify a director, see *Molineaux* v. *London, Birmingham, and Manchester Insurance Co.*, [1902] 2 K. B. 589.

Validity of acts of directors.

74. The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

This section is taken from the concluding sentence of s. 67 of the Act of 1862. See *British Medical Association* v. *Jones* (1889), 61 L. T. 384, where the validity of a call was held not to be affected by an irregularity in the appointment of one of the directors who made it.

List of directors to be sent to registrar.

75.—(1) Every company shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and send to the registrar of companies a copy thereof, and from time to time notify to the registrar any change among its directors or managers.

(2) If default is made in compliance with this section, the company shall be liable to a fine not

exceeding five pounds for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

This section embodies in an abbreviated form the provisions of ss. 45 and 46 of the Act of 1862, as amended by s. 20 of the Act of 1900.

Contracts, etc.

Form of contracts.

76.—(1) Contracts on behalf of a company may be made as follows (that is to say):—

(i) Any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company, and may in the same manner be varied or discharged:

(ii) Any contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged:

(iii) Any contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(2) All contracts made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto, their heirs, executors, or administrators as the case may be.

(3) Any deed to which a company is a party shall be held to be validly executed in Scotland on behalf of the company if it is executed in terms of

the provisions of this Act or is sealed with the common seal of the company and subscribed on behalf of the company by two of the directors and the secretary of the company, and such subscription on behalf of the company shall be equally binding whether attested by witnesses or not.

Sub-sects. (1) and (2) reproduce in shorter language s. 37 of the Act of 1867. See cases cited in Rawlins and Macnaghten on Companies, p. 222.

Bills of exchange and promissory notes.

77. A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted, or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.

See s. 47 of the Act of 1862; and as to the liability on bills or notes of a company and persons authorised or purporting to be authorised by it, see decisions referred to in Rawlins and Macnaghten on Companies, p. 259.

As to the penalties for not mentioning the name of a limited company in its bills of exchange and promissory notes, see s. 63, p. 78, *ante*.

Execution of deeds abroad.

78. A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the United Kingdom; and every deed signed by such attorney, on behalf of the company, and under his seal, shall bind the company, and have the same effect as if it were under its common seal.

See s. 55 of the Act of 1862, which was in almost identical terms.

This power to act by attorney is distinct from the power to have an official seal abroad conferred by the next following section.

Power for company to have official seal for use abroad.

79.—(1) A company whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have for use in any territory, district, or place not situate in

the United Kingdom, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district, or place where it is to be used.

(2) A company having such an official seal may, by writing under its common seal, authorise any person appointed for the purpose in any territory, district, or place not situate in the United Kingdom, to affix the same to any deed or other document to which the company is party in that territory, district, or place.

(3) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(4) The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same.

(5) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

This section reproduces in more concise language the effect of ss. 2–6 of the Companies Seals Act, 1864 (27 Vict. c. 19).

Prospectus.

Filing of prospectus.

80.—(1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his

agent authorised in writing, shall be filed for registration with the registrar of companies on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

(3) The registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding five pounds for every day from the date of the issue of the prospectus until a copy thereof is so filed.

This section replaces s. 9 of the Act of 1900 as amended by s. 3 of the Act of 1907. There was no statutory penalty before the Act of 1907.

As to the meaning of prospectus, see s. 285, p. 271, *post*.

As to the meaning of "issued," see *per* COCKBURN, C.J., in *Twycross* v. *Grant* (1877), 2 C. P. D. 469, 509.

Specific requirements as to particulars of prospectus.

81.—(1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state—

(*a*) the contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively; and the number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company; and

(*b*) the number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors; and

(*c*) the names, descriptions, and addresses of the directors or proposed directors; and

(*d*) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount, if any, paid on the shares so allotted; and

(*e*) the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued; and

(*f*) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor: Provided that where the vendors or any of them are a firm the members of the firm shall not be treated as separate vendors; and

(*g*) the amount (if any) paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount (if any) payable for goodwill; and

(*h*) the amount (if any) paid within the two preceding years, or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission: Provided that it shall not be necessary to state the commission payable to sub-underwriters; and

(*i*) the amount or estimated amount of preliminary expenses; and

(*j*) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment; and

(*k*) the dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than two years before the date of issue of the prospectus; and

(*l*) the names and addresses of the auditors (if any) of the company; and

(*m*) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or, otherwise for services rendered by him or by the firm in connexion with the promotion or formation of the company; and

(*n*) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively.

(2) For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

(*a*) the purchase money is not fully paid at the date of issue of the prospectus; or

(*b*) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or

(*c*) the contract depends for its validity or fulfilment on the result of that issue.

(3) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

(4) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(5) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum or the signatories thereto, and the number of shares subscribed for by them.

(6) In the event of non-compliance with any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that—

(*a*) as regards any matter not disclosed, he was not cognizant thereof; or

(*b*) the non-compliance arose from an honest mistake of fact on his part:

Provided that in the event of non-compliance with the requirements contained in paragraph (*m*) of sub-section (1) of this section no director or other person shall incur any liability in respect of the non-compliance unless it be proved that he had knowledge of the matters not disclosed.

(7) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons, but subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently.

(8) The requirements of this section as to the memorandum and the qualification, remuneration, and interest of directors, the names, descriptions, and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business.

(9) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

With immaterial changes of wording this section exactly repeats s. 10 of the Act of 1900 as amended by s. 2 of the Act of 1907.

As to the meaning of "prospectus," see s. 285, p. 271, *post*; *Sleigh* v. *Glasgow and Transvaal Options* (1904), 6 F. 420.

The term "debenture" includes debenture stock (*ibid.*).

As to the "minimum subscription," see s. 85, p. 103, *post*.

Having regard to sub-sect. (6) of that section, and notwithstanding sub-sect. (8) of s. 81, it would seem

that no minimum subscription need be stated except on the first allotment of shares offered for public subscription.

The language of sub-sect. (1) (*d*) tends to show that in a prospectus offering debentures or debenture stock, no minimum subscription need be stated even in the case of a first offer.

As to the meaning of sub sect. (1) (*f*), see *Brookes* v. *Hansen*, [1906] 2 Ch. 129.

As to underwriting commissions, see s. 89, p. 109, *post*.

As to who is a "promoter" (sub-sect. (1) (*j*)), see cases cited in Rawlins and Macnaghten on Companies, pp. 238, 239; and as to a "material contract" (sub-sect. (1) (*k*)), see pp. 239, 240, *ibid.*

Sub-sect. (7) refers to the case where shares are offered to existing shareholders or debenture holders or where debentures are offered to existing debenture holders or shareholders. This was not clear on the language of either s. 10 of the Act of 1900 or s. 2 of the Act of 1907.

The nature of the liability incurred by non-compliance with the requirements of the section referred to in sub-sect. (6) is not defined, and may be uncertain (see Rawlins and Macnaghten on Companies, p. 243); but as to the civil remedy for the breach of the statutory duties of a corporation, see *Johnston and Toronto Type Foundry Co.* v. *Consumers Gas Co. of Toronto*, [1898] A. C. 447, and the cases there cited. See also Lindley on Companies, 6th ed., p. 126.

As to the liability for untrue statements in a prospectus, see s. 84, p. 99, *post*.

Obligations of companies where no prospectus is issued.

82.—(1) A company which does not issue a prospectus on or with reference to its formation, shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the registrar of companies a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in the Second Schedule to this Act.

(2) This section shall not apply to a private

company or to a company which has allotted any shares or debentures before the first day of July nineteen hundred and eight.

See s. 1 (1), (5) of the Act of 1907. Private companies are defined, s. 121, p. 140, *post.*

For form of statement in lieu of prospectus, see p. 305, *post.*

The companies to which this section applies are *quasi*-private companies, namely, those which, before the Act of 1907, were generally known as private companies. The Act of 1900 exempted these companies from many of the obligations imposed by that Act on companies which invite the public to subscribe for their shares.

The Act of 1907 rendered *quasi*-private companies liable, with modifications, to many of the obligations to which only public companies were subjected by the Act of 1900. The Consolidation Act has simplified the language of s. 1 of the Act of 1907, which was difficult to understand.

The date July 1, 1908, is that of the commencement of the Act of 1907.

Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.

83. A company shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

See s. 11 of the Act of 1900 as extended to prospectusless companies by s. 1 (2) and Schedule II. of the Act of 1907.

The contracts referred to are those mentioned in s. 81 (1) (*k*).

As to the statutory meeting, see s. 65, p. 80, *ante.*

Liability for statements in prospectus.

84.—(1) Where a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who has authorised the naming of him and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the

company, and every person who has authorised the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

(*a*) With respect to every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and

(*b*) With respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation. Provided that the director, person named as director, promoter, or person who authorised the issue of the prospectus, shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and

(*c*) With respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document:

or unless it is proved—

(i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was

issued without his authority or consent; or

(ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

(iii) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor.

(2) Where a company existing on the eighteenth day of August one thousand eight hundred and ninety, has issued shares or debentures, and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus, a director shall not be liable in respect of any statement therein, unless he has authorised the issue of the prospectus, or has adopted or ratified it.

(3) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(4) Every person who by reason of his being a director, or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who,

if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(5) For the purposes of this section—

The expression "promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company:

The expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

This section reproduces, practically *verbatim*, ss. 3–5 of the Directors Liability Act, 1890 (53 & 54 Vict. c. 64), and the amendment of s. 5 contained in s. 33 of the Act of 1907.

"Debentures" in sub-sect. (1) includes debenture stock; see s. 285, p. 270, *post*.

The limitation of the meaning of "promoter" in sub-sect. (5) does not elucidate the general meaning of that term, which is nowhere explained in the Act; see note in Rawlins and Macnaghten on Companies, pp. 238, 239.

For decisions on the Act of 1890, see Rawlins and Macnaghten, pp. 229–233.

As to the measure of damages, see *McConnel* v. *Wright*, [1903] 1 Ch. 546.

Directors may be liable under the section although no moral fraud is alleged against them, *e.g.* where they omit to mention material contracts honestly believed by them to be immaterial (*Shepheard* v. *Broome*, [1904] A. C. 342).

As to the recovery of contribution under sub-sect. (4), see *Shepheard* v. *Bray*, [1907] 2 Ch. 571. The words "unless" etc., in this sub-section are to the same effect as those of s. 33 of the Act of 1907. And see *Gerson* v. *Simpson*, [1903] 2 K. B. 197; *Shepheard* v. *Broome*, *supra*.

Allotment.

85.—(1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with, namely:— Restriction as to allotment.

(*a*) the amount (if any) fixed by the memorandum or articles and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(*b*) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription,

has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received by the company.

(2) The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription.

(3) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the forty-eighth day:

Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except subsection (3) thereof, shall not apply to any allotment of shares subsequent

to the first allotment of shares offered to the public for subscription.

(7) In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is to say):—

(*a*) the amount (if any) fixed by the memorandum or articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(*b*) if no amount is so fixed and named, then the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash,

has been subscribed and an amount not less than five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company.

This subsection shall not apply to a private company or to a company which has allotted any shares or debentures before the first day of July nineteen hundred and eight.

Sub-sects. (1)–(6) replace s. 4 of the Act of 1900, and sub-sect. (7) replaces s. 1 (3)—as modified by s. 1 (5)—of the Act of 1907.

As to what is an invitation to the public, see *Burrows* v. *Matabele Gold Reefs and Estates Co.*, [1901] 2 Ch. 23; *Sherwell* v. *Combined Incandescent Mantles Syndicate*, [1907] 23 T. L. R. 482.

As to what is a sufficient statement of the minimum subscription, see *West Yorkshire Darracq Agency, Ltd.*, [1908] W. N. 236.

The prospectus is the document which actually comes to the knowledge of the subscriber, whether it is or is not the document filed under s. 80 (*Roussell* v. *Burnham*, [1909] 1 Ch. 127).

The sum payable has not been "paid to and received by the company" when cheques for the amount have been received but not cleared. The payment referred to is a payment in cash. See *Mears* v. *Western Canada*

Pulp and Paper Co., [1905] 2 Ch. 353; *Re National Motor Mailcoach Co.*, [1908] 2 Ch. 228; *Burton* v. *Bevan*, [1908] 2 Ch. 248; and compare *Glasgow Pavilion* v. *Motherwell*, [1904] 6 F. 116.

As to private companies, see s. 121, p. 140, *post*. The date July 1, 1908, was the date of the commencement of the Act of 1907.

Effect of irregular allotment.

86.—(1) An allotment made by a company to an applicant in contravention of the provisions of the last foregoing section shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of the last foregoing section with respect to allotment he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby: Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

See s. 5 of the Act of 1900, and Rawlins and Macnaghten on Companies, pp. 210, 211.

The time limit under sub-sect. (1) does not apply in the case of a company registered before January 1, 1901: *Finance and Issue, Ltd.* v. *Canadian Produce Corporation*, [1905] 1 Ch. 37.

Restrictions on commencement of business.

87.—(1) A company shall not commence any business or exercise any borrowing powers unless—

(*a*) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and

(*b*) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for

which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription, or in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash; and

(*c*) there has been filed with the registrar of companies a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with; and

(*d*) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the registrar of companies a statement in lieu of prospectus.

(2) The registrar of companies shall, on the filing of this statutory declaration, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled:

Provided that in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares the registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

(3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(5) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding fifty

pounds for every day during which the contravention continues.

(6) Nothing in this section shall apply to a private company, or to a company registered before the first day of January nineteen hundred and one, or to a company registered before the first day of July nineteen hundred and eight which does not issue a prospectus inviting the public to subscribe for its shares.

This section re-enacts the provisions of s. 6 of the Act of 1900 as amended by s. 1 (2) and Schedule II. of the Act of 1907. The form of statutory declaration required by sub-sect. (1) (*c*) is prescribed by the Board of Trade. The restrictions on commencing business or exercising borrowing powers were originally only made applicable to companies which invited the public to subscribe for their shares (see Act of 1900, s. 6 (7)); *quasi*-private companies being, until July 1, 1908, in the favourable position, as regards carrying on business or borrowing, now occupied by private companies under s. 87 sub-sect. (6) of the Consolidation Act. The provision in that clause that the section shall not apply to a company registered before July 1, 1908 (the date of commencement of the Act of 1907), is really an alteration of the effect of s. 1 of the Act of 1907, for the restrictions imposed by that section on *quasi*-private companies extended to those companies, if formed before July 1, 1908, unless they had before that date "allotted any shares or debentures." See Act of 1907, s. 1, sub-sect. (5).

Sub-sect. (3) of s. 87 of the Consolidation Act applies to all contracts, whether provisional or final, and is of general application to contracts. See *Otto Electrical Manufacturing Co.*, [1906] 2 Ch. 390.

Return as to allotments.

88.—(1) Whenever a company limited by shares makes any allotment of its shares, the company shall within one month thereafter file with the registrar of companies—

(*a*) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and

(*b*) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment file with the registrar of companies the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Act, 1891, and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section twelve of that Act.

(3) If default is made in complying with the requirements of this section, every director, manager, secretary, or other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds for every day during which the default continues:

Provided that, in case of default in filing with the registrar of companies within one month after the allotment any document required to be filed by this section, the company, or any person liable for the default, may apply to the court for relief, and the court, if satisfied that the omission to file the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such period as the court may think proper.

This section replaces s. 7 of the Act of 1900 (as amended by s. 6 of the Act of 1907), as to which see Rawlins and Macnaghten, pp. 216–219.

The proviso to sub-sect. (3) was omitted from the Act of 1900, probably under the impression that the same relief might be obtained under the Companies Act, 1898 (61 & 62 Vict. c. 26). That Act only applied, however, where there had been an omission to file a contract required to be filed under s. 25 (repealed in 1900) of the Companies Act, 1867. The omission to file in accordance with s. 88 of the Consolidation Act, does not, as did s. 25 of the Act of 1867, render the allottee of the shares liable to pay anything in respect of what by the agreement is to be treated as paid-up capital, and it is no concern of his to apply for an extension of the time for filing. If the company goes into liquidation before the contract is filed, the liquidator is an "officer" of the company within the meaning of sub-sect. (3) of s. 88 (*Re X and Co.*, [1907] 2 Ch. 92).

Commissions and Discounts.

Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, &c.

89.—(1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission is authorised by the articles, and the commission paid or agreed to be paid does not exceed the amount or rate so authorised, and if the amount or rate per cent. of the commission paid or agreed to be paid is—

(*a*) In the case of shares offered to the public for subscription, disclosed in the prospectus; or

(*b*) In the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed with the registrar of companies, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, and a vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

Substituted for s. 8 of the Act of 1900 and s. 8 of the Act of 1907; the changes of wording are only such as are required to combine the provisions of the two sections. See Rawlins and Macnaghten, pp. 220, 221, as to the effect of the former section. The provision is not strictly confined to the underwriting of shares. See *Keatinge* v. *Paringa Consolidated Mines, Ltd.* (1902), 18 T. L. R. 266. And according to that case the provision is not to be allowed to make a cloak for issuing shares at a discount; but there is no limit in the section, as to the amount or rate of discount which may be allowed, provided it is authorised by the articles.

Agreeing to allot shares at par with an option to take further shares at par within a limited time, in order to raise working capital, is not an application of capital moneys which is forbidden by s. 89: *Hilder* v. *Dexter*, [1902] A. C. 474, overruling *Burrows* v. *Matabele Gold Reefs and Estates Co.*, [1901] 2 Ch. 23.

Offering debentures at a discount on the terms that

the holder shall within a limited time have the option to exchange their debentures at face value for fully paid shares of the same amount is a transaction involving the issue of shares at a discount which will be restrained by injunction: *Mosely* v. *Koffyfontein Mines, Ltd.*, [1904] 2 Ch. 108.

As to whether underwriting can be allowed on all the shares, if a nominal amount of them only are offered for public subscription, see *Booth* v. *New Afrikander Gold Mining Co.*, [1903] 1 Ch. 295.

Statement in balance sheet as to commissions and discounts.

90. Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.

See s. 7 of the Act of 1907. The requirement in that section as to the statement in the annual summary is embodied in s. 26 of this Act (p. 50, *ante*).

Payment of Interest out of Capital.

Power of company to pay interest out of capital in certain cases.

91. Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building, or the provision of plant:

Provided that—

(1) No such payment shall be made unless the same is authorised by the articles or by special resolution:

(2) No such payment, whether authorised by the articles or by special resolution, shall be

made without the previous sanction of the Board of Trade:

(3) Before sanctioning any such payment the Board of Trade may, at the expense of the company, appoint a person to inquire and report to them as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry:

(4) The payment shall be made only for such period as may be determined by the Board of Trade; and such period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided:

(5) The rate of interest shall in no case exceed four per cent. per annum or such lower rate as may for the time being be prescribed by Order in Council:

(6) The payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid:

(7) The accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate:

(8) Nothing in this section shall affect any company to which the Indian Railways Act, 1894, as amended by any subsequent enactment applies.

See s. 9 of the Act of 1907, which is identical in terms. As to the power to pay interest out of capital before the passing of the Act of 1907, see *Hinds* v. *Buenos Ayres Grand National Tramways Co.*, [1906] 2 Ch. 654.

For companies to which the Indian Railways Act, 1894 (57 & 58 Vict. c. 12), applies, see s. 2 of that Act.

Certificates of Shares, etc.

Limitation of time for issue of certificates.

92.—(1) Every company shall, within two months after the allotment of any of its shares, debentures, or debenture stock, and within two months after the registration of the transfer of any such shares, debentures, or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures, or debenture stock otherwise provide.

(2) If default is made in complying with the requirements of this section, the company, and every director, manager, secretary, and other officer of the company who is knowingly a party to the default, shall be liable to a fine not exceeding five pounds for every day during which the default continues.

See s. 5 of the Act of 1907, which is reproduced *verbatim*.

As to the law before 1907, see *Burdett* v. *Standard Exploration Co.* (1899), 16 T. L. R. 112.

Information as to Mortgages, Charges, etc.

Registration of mortgages and charges in England and Ireland.

93.—(1) Every mortgage or charge created after the first day of July nineteen hundred and eight by a company registered in England or Ireland and being either—

(*a*) a mortgage or charge for the purpose of securing any issue of debentures; or

(*b*) a mortgage or charge on uncalled share capital of the company; or

(*c*) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale; or

(*d*) a mortgage or charge on any land, wherever situate, or any interest therein; or

(*e*) a mortgage or charge on any book debts of the company; or

(*f*) a floating charge on the undertaking or property of the company,

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, are delivered to or received by the registrar of companies for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section the money secured thereby shall immediately become payable:

Provided that—

(i) in the case of a mortgage or charge created out of the United Kingdom comprising solely property situate outside the United Kingdom, the delivery to and the receipt by the registrar of a copy of the instrument by which the mortgage or charge is created or evidenced, verified in the prescribed manner, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in the United Kingdom, shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be delivered to the registrar; and

(ii) where the mortgage or charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument creating or purporting to create the mortgage or charge may be sent for

registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate; and

(iii) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts; and

(iv) the holding of debentures entitling the holder to a charge on land shall not be deemed to be an interest in land.

(2) The registrar shall keep, with respect to each company, a register in the prescribed form of all the mortgages and charges created by the company after the first day of July nineteen hundred and eight and requiring registration under this section, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(3) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled pari passu is created by a company, it shall be sufficient if there are delivered to or received by the registrar within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars:—

(*a*) the total amount secured by the whole series; and

(*b*) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and

(*c*) a general description of the property charged; and

(*d*) the names of the trustees, if any, for the debenture holders;

together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series, and the registrar shall, on payment of the prescribed fee, enter those particulars in the register:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(4) Where any commission, allowance, or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent. of the commission, discount, or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.

(5) The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this section as to registration have been complied with.

(6) The company shall cause a copy of every certificate of registration given under this section to be endorsed on every debenture or certificate of debenture stock which is issued by the company,

and the payment of which is secured by the mortgage or charge so registered:

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

(7) It shall be the duty of the company to send to the registrar for registration the particulars of every mortgage or charge created by the company and of the issues of debentures of a series, requiring registration under this section, but registration of any such mortgage or charge may be effected on the application of any person interested therein.

Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

(8) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one shilling for each inspection.

(9) Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section to be kept at the registered office of the company: Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

This section is taken from s. 10 of the Act of 1907, which repealed the corresponding s. 14 of the Act of 1900. The exclusion of companies registered in Scotland is taken from s. 34 (2) of the Act of 1900, which is in effect incorporated with s. 10 of the Act of 1907 by s. 52 (1) of the latter Act.

When property specifically mortgaged is sold, and the proceeds are invested in other property which is assigned to the company and by it assigned to debenture trustees, the latter assignment requires registration: *Cornbrook Brewery Co.* v. *Law Debenture Corporation*, [1904] 1 Ch. 103. But registration is not necessary where the

property is directly conveyed by the vendors to the trustees (*ibid.*; *Bristol United Breweries, Ltd.* v. *Abbot*, [1908] 1 Ch. 279). As to specific mortgages of ships on which the trustees have already a specific equitable charge, see *Cunard Steamship Co.* v. *Hopwood*, [1908] 2 Ch. 564.

As to whether debentures reissued under s. 104, p. 125, *post*, require registration, see *Re New London and Suburban Omnibus Co.*, [1908] 1 Ch. 621.

Where a series of debentures was created before January 1, 1901, when the corresponding section (s. 14) of the Act of 1900 came into force, those debentures of the series which were issued after that date did not require registration: *Re Spiral Globe, Ltd.* (No. 2), [1902] 2 Ch. 209. But from and after January 1, 1901, registration of most of the securities referred to in the above section has been required.

The registration of mortgages or charges on land and book debts was not required before July 1, 1908, when the Act of 1907 came into operation.

As to the meaning of "floating charge" or "floating security," see *Tailby* v. *Official Receiver* (1888), 13 App. Cas. 523; *Government Stock and Other Securities Investment Co.* v. *Manila Railway Co.*, [1897] A. C. 81, 86; *Illingworth* v. *Houldsworth*, [1904] A. C. 335 (which see also as to a mortgage of book debts).

The requirements of the section as to the period within which registration is to be effected may be evaded by substituting from time to time, within the original and every succeeding period of twenty-one days, a new debenture in place of the one or last one previously issued (*Re Renshaw & Co.*, [1908] W. N. 210); or by a cancellation and reissue (*Re N. Defries & Co.*, [1904] 1 Ch. 37.

Sub-sect. (3) adopts the construction of s. 14, sub-sect. (4), of the Act of 1900 placed on that clause in *Re Harrogate Estates, Ltd.*, [1903] 1 Ch. 498, 503; see *Cunard Steamship Co.* v. *Hopwood*, [1908] 2 Ch. 564, 577.

After the certificate referred to in sub-sect. (5) has been given, the court refuses to go into evidence as to whether the requirements of s. 93 have been complied with: *Re Yolland, Husson & Birkett, Ltd.*, [1908] 1 Ch. 152; *Cunard Steamship Co.* v. *Hopwood*, *supra*.

As to the power to extend the time for registration,

see s. 96, p. 120, *post*, a provision which ought to have immediately followed s. 93.

It should be mentioned that, by s. 12 of the Act of 1907, registration within three months of July 1, 1907, was required of secured debts created before and outstanding at that date. Although this provision is no longer operative, the three months having elapsed and the present Act containing no corresponding provision, yet the repeal of s. 12 of the Act of 1907 does not affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against the repealed enactment (Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 38 (2) (*d*)); and consequently, where default was made in complying with s. 12, the company and its officers are not relieved from the fine of £50 *per diem* thereby incurred.

Registration of enforcement of security.

94.—(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall within seven days from the date of the order or of the appointment under the powers contained in the instrument give notice of the fact to the registrar of companies, and the registrar shall, on payment of the prescribed fee, enter the fact in the register of mortgages and charges.

(2) If any person makes default in complying with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

See s. 11 of the Act of 1907, sub-sect. (2) of which is omitted as no longer necessary; although penalties may be incurred under the repealed clause. See Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 38 (2).

Filing of accounts of receivers and managers.

95.—(1) Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall, once in every half year while he remains in possession, and also on ceasing to act as receiver or manager, file with the registrar of companies an abstract in the prescribed form of

his receipts and payments during the period to which the abstract relates, and shall also on ceasing to act as receiver or manager file with the registrar notice to that effect, and the registrar shall enter the notice in the register of mortgages and charges.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding fifty pounds.

See s. 41 of the Act of 1907, the provisions of which are adopted without alteration.

The section does not apply to a receiver or manager appointed by the court; as such an officer has to render accounts under the general practice of the court: see R. S. C., Ord. L, rr. 18–22, Yearly Practice, 1909, pp. 672–680.

Rectification of register of mortgages.

96. A judge of the High Court, on being satisfied that the omission to register a mortgage or charge within the time hereinbefore required, or that the omission or misstatement of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the judge just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified.

See s. 15 of the Act of 1900; which is repeated *verbatim*.

The enactment which this section replaces has been fruitful of decision and *dicta*. Buckley, J., following the practice as to extending the time for registering bills of sale (see *Crew* v. *Cummings* (1888), 21 Q. B. D. 420; *Re Parsons, Ex parte Furber*, [1893] 2 Q. B. 122), insisted on making all his extension orders "without prejudice to the rights of parties acquired prior to the time when such debentures shall be actually registered." The effect of such an order was not at once appreciated,

and SWINFEN EADY, J., made a similar order even after the company had gone into liquidation (*Re Spiral Globe, Ltd.*, [1902] 1 Ch. 396). Under similar circumstances BUCKLEY, J., refused to make the order as being useless after winding up had commenced (*Re S. Abrahams & Sons*, [1902] 1 Ch. 695). The restrictive words introduced by BUCKLEY, J., were altered, perhaps in form only, by the Court of Appeal in *Re I. C. Johnson & Co.*, [1902] 2 Ch. 101. The form of order in that case, *mutatis mutandis*, is now the one generally adopted; see *Re Anglo-Oriental Carpet Manufacturing Co.*, [1903] 1 Ch. 614.

The protecting words were held by the Court of Appeal to protect only creditors who had previously obtained some charge or security upon the company's property, including those unsecured creditors who had acquired rights under a winding up, but not any other unsecured creditors (*Re Ehrmann Bros., Ltd.*, [1906] 2 Ch. 697). There is a criticism of this case in *Re Cardiff Workmen's Cottage Co.*, [1906] 2 Ch. 627.

The restrictive form of order is still used (January, 1909).

The application for extension of time should be by originating motion, and the name of the judge to whom it is to be made must be balloted for.

Entry of satisfaction.

97. The registrar of companies may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall if required furnish the company with a copy thereof.

This section replaces s. 16 of the Act of 1900.

Index to register of mortgages and charges.

98. The registrar of companies shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Act.

Formerly s. 17 of the Act of 1900.

Penalties.

99.—(1) If any company makes default in sending to the registrar of companies for registration the particulars of any mortgage or charge created by the company, and of the issues of debentures of a series,

requiring registration with the registrar under the foregoing provisions of this Act, then, unless the registration has been effected on the application of some other person, the company, and every director, manager, secretary, or other person who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds for every day during which the default continues.

(2) Subject as aforesaid, if any company makes default in complying with any of the requirements of this Act as to the registration with the registrar of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company, who knowingly and wilfully authorised or permitted the default shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds.

(3) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock requiring registration with the registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds.

Sub-sect. (1) is taken from s. 10 (6) of the Act of 1907 ; sub-sects. (2) and (3) replace s. 18 of the Act of 1900 with the additions necessary to distinguish between registration with the registrar and registration in the company's register of mortgages under s. 100, *infra*.

Company's register of mortgages.

100.—(1) Every limited company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge, and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto.

(2) If any director, manager, or other officer of

the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding fifty pounds.

This section reproduces the first part of s. 43 of the Act of 1862 with slight verbal changes, and the addition of the express exception of securities to bearer, in regard to which it would of course be impossible to register the names of the persons entitled thereto.

The neglect to register under this section does not invalidate the security (*Wright* v. *Horton* (1887), 12 App. Cas. 371); but where registration with the registrar is required under s. 93, p. 113, *ante*, non-compliance with that requirement will invalidate the security, the money secured becoming immediately payable.

Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages.

101.—(1) The copies of instruments creating any mortgage or charge requiring registration under this Act with the registrar of companies, and the register of mortgages kept in pursuance of the last foregoing section, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one shilling for each inspection, as the company may prescribe.

(2) If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorising or knowingly and wilfully permitting the refusal, shall be liable to a fine not exceeding five pounds, and a further fine not exceeding two pounds for every day during which the refusal continues; and, in addition to the above penalty as respects companies registered in England or Ireland, any judge of the High Court sitting in chambers, or the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, may by order compel an immediate inspection of the copies or register.

This section replaces the latter part of s. 43 of the Act of 1862 as amended by s. 17 of the Act of 1907; incorporating therewith the provision as to inspection

of copies of instruments contained in s. 10 (8) of the Act of 1907, and making necessary verbal alterations.

The right to inspect includes a right to take copies; see *Nelson* v. *Anglo-American Land Mortgage Agency Co.*, [1897] 1 Ch. 130, 134; *Re Credit Co.* (1879), 11 Ch. D. 256.

Right of debenture holders to inspect the register of debenture holders and to have copies of trust deed.

102.—(1) Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of sixpence for every one hundred words required to be copied.

(2) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of sixpence for every one hundred words required to be copied.

(3) If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding five pounds, and to a further fine not exceeding two pounds for every day during which the refusal continues, and every director, manager, secretary, or other officer of the company who knowingly authorises or permits the refusal shall incur the like penalty.

See s. 18 of the Act of 1907, from which the above is taken *verbatim*.

Apparently, the right to inspect does not in this case carry with it the right to take extracts from or make copies of the entries in the register; see *Re Balaghât*

Gold Mining Co., [1901] 2 K. B. 665, on similar words in another Act; but copies may be obtained on payment as prescribed in the section.

Debentures and Floating Charges.

Perpetual debentures.

103. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

See s. 14 of the Act of 1907, which was passed to remove doubts previously entertained; see *Re Southern Brazilian Rio Grande do Sul Railway Co.*, [1905] 2 Ch. 78.

Power to re-issue redeemed debentures in certain cases.

104.—(1) Where either before or after the passing of this Act a company has redeemed any debentures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such a re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

(2) Where with the object of keeping debentures alive for the purpose of re-issue they have either

before or after the passing of this Act been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(3) Where a company has either before or after the passing of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the passing of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(5) Nothing in this section shall prejudice—

(*a*) the operation of any judgment or order of a court of competent jurisdiction pronounced or made before the seventh day of March nineteen hundred and seven as between the parties to the proceedings in which the judgment was pronounced or the order made, and any appeal from any such judgment or order shall be decided as if this Act had not been passed; or

(*b*) any power to issue debentures in the place of

any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

See s. 15 of the Act of 1907, which was passed in consequence of the decisions in *Re George Routledge and Sons, Ltd.*, [1904] 2 Ch. 474; *Re W. Tasker and Sons, Ltd.*, [1905] 2 Ch. 587; *Re Perth Electric Tramways, Ltd.*, [1906] 2 Ch. 216. And see *Re Russian Petroleum and Liquid Fuel Co.*, [1907] 2 Ch. 540.

Under the usual power in a trust deed to modify the rights of the debenture holders of a *pro ratâ* series, the deed may be altered so as to give a right to re-issue debentures: *Re Kent Collieries, Ltd.* (1907), 23 T. L. R. 559.

As to the necessity of registering re-issued debentures, see *Re New London and Suburban Omnibus Co.*, [1908] 1 Ch. 621.

Specific performance of contract to subscribe for debentures.

105. A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

See s. 16 of the Act of 1907, which alters, in favour of the company, the law as settled by *South African Territories, Ltd.* v. *Wallington*, [1898] A. C. 309.

Validity of debentures to bearer in Scotland.

106. Notwithstanding anything contained in the statute of the Scots Parliament of 1696, chapter twenty-five, debentures to bearer issued in Scotland are declared to be valid and binding according to their terms.

See s. 36 of the Act of 1907.

Payments of certain debts out of assets subject to floating charge in priority to claims under the charge.

107.—(1) Where, in the case of a company registered in England or Ireland, either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding-up are under the provisions

of Part IV. of this Act relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the said provisions of Part IV. of this Act shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

This section replaces s. 3 of the Preferential Payments in Bankruptcy Amendment Act, 1897 (60 & 61 Vict. c. 19). The exclusion of Scotland is taken from s. 5 of that Act. The provisions in Part IV. of this Act referred to are contained in s. 209 (p. 209, *post*), which gives priority to the same debts as did the Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62), s. 1, to which s. 3 of the Act of 1897 referred.

As to when the section applies, see *Re Barnby's, Ltd.*, [1899] W. N. 103; *Re Mannesmann Tube Co.*, [1901] 2 Ch. 93. And see notes to s. 209, p. 210, *post*.

Where a receiver appointed by the court has sold property of the company, the overseers are not entitled to payment of poor rates made when the receiver is in possession: *Re British Fuller's Earth Co.* (1901), 17 T. L. R. 232.

A difficulty arises in regard to the provision that debts given priority in Part IV. (s. 209) are to have priority under this section, in relation to sub-sect. (1) (*d*) of s. 209. That sub-section refers to compensation under the Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), "subject nevertheless to the provisions of section five of that Act." Since s. 5 of the Act of 1906 only confers priority where the employer is a company in the event of the company being wound up, and not where a receiver is appointed, it is submitted that s. 107 of the present Act does not give priority to a claim for compensation where a receiver is appointed.

It might perhaps be argued that the provision in s. 5 (3) of the Act of 1906 that "the Preferential Payments in Bankruptcy Amendment Act, 1897, shall have effect accordingly" operates to give such priority; but those words seem only to refer to the provisions of s. 2 of the Act of 1897.

Statement to be published by Banking and certain other Companies.

Certain companies to publish statement in schedule.

108.—(1) Every company being a limited banking company or an insurance company or a deposit, provident, or benefit society shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form marked C. in the First Schedule to this Act, or as near thereto as circumstances will admit.

(2) A copy of the statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding sixpence.

(4) If default is made in compliance with this section, the company shall be liable to a fine not exceeding five pounds for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(5) For the purposes of this Act a company that carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

(6) This section shall not apply to any life assurance company nor any other assurance company to which the provisions of the Life Assurance Companies Acts, 1870 to 1872, as to the annual statements to be made by such a company, apply with

or without modifications, if the company complies with those provisions.

This section replaces s. 44 of the Act of 1862, incorporating also (sub-sect. (5)) the definition contained in s. 3 of the Act of 1862, and (sub-sect. (6)) the exemption conferred by s. 40 of the Act of 1907.

The first Tuesday in August has been substituted for Monday, the Monday being a Bank Holiday.

Form C is printed at p. 304, *post*.

Inspection and Audit.

Investigation of affairs of company by Board of Trade inspectors.

109.—(1) The Board of Trade may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the Board direct—

(i) In the case of a banking company having a share capital, on the application of members holding not less than one-third of the shares issued:

(ii) In the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued:

(iii) In the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members.

(2) The application shall be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in requiring, the investigation; and the Board of Trade may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

(3) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

(4) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.

(5) If any officer or agent refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable to a fine not exceeding five pounds in respect of each offence.

(6) On the conclusion of the investigation the inspectors shall report their opinion to the Board of Trade, and a copy of the report shall be forwarded by the Board to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

The report shall be written or printed, as the Board direct.

(7) All expenses of and incidental to the investigation shall be defrayed by the applicants, unless the Board of Trade direct the same to be paid by the company, which the Board is hereby authorised to do.

This section consolidates ss. 56–58 of the Act of 1862 as amended by s. 44 of the Act of 1907. See *Re Grosvenor Hotel Co.* (1897), 76 L. T. 337.

Power of company to appoint inspectors.

110.—(1) A company may by special resolution appoint inspectors to investigate its affairs.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Board of Trade, except that, instead of reporting to the Board, they shall report in such manner and to such persons as the company in general meeting may direct.

(3) Officers and agents of the company shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the Board of Trade.

See s. 60 of the Act of 1862.

Quære whether the appointment of a single inspector under this section is authorised: see Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 1.

Report of inspectors to be evidence.

111. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

See s. 61 of the Act of 1862.

Appointment and remuneration of auditors.

112.—(1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(2) If an appointment of auditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(3) A director or officer of the company shall not be capable of being appointed auditor of the company.

(4) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the shareholders, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting:

Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this provision, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this provision, be sent or given at the same time as the notice of the annual general meeting.

(5) The first auditors of the company may be

appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at that meeting may appoint auditors.

(6) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

(7) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

This section consolidates ss. 21 and 22 of the Act of 1900 and s. 19 (4) of the Act of 1907.

Although sub-sect. (5) can only apply to a company which has shares (see s. 65 (1), p. 80, *ante*), the remaining sub-sections apply apparently to all companies registered under the Joint Stock Companies Acts, the Act of 1862, or this Act (see s. 285, p. 269, *post*).

The provision in sub-sect. (4) that "the company shall send a copy of any such notice to the retiring auditor" means, it is submitted, "to the retiring auditor or auditors;" but the use of the singular only after the reference to reappointment of "a retiring auditor" in the earlier part of the same sentence is somewhat confusing. See, however, Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 1.

Powers and duties of auditors.

113.—(1) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

(2) The auditors shall make a report to the shareholders on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state—

(*a*) whether or not they have obtained all the information and explanations they have required; and

(*b*) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

(3) The balance sheet shall be signed on behalf of the board by two of the directors of the company or, if there is only one director, by that director, and the auditors' report shall be attached to the balance sheet, or there shall be inserted at the foot of the balance sheet a reference to the report, and the report shall be read before the company in general meeting, and shall be open to inspection by any shareholder.

Any shareholder shall be entitled to be furnished with a copy of the balance sheet and auditors' report at a charge not exceeding sixpence for every hundred words.

(4) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated, or published, or if any copy of a balance sheet is issued, circulated, or published without either having a copy of the auditors' report attached thereto or containing such reference to that report as is required by this section, the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds.

(5) In the case of a banking company registered after the fifteenth day of August eighteen hundred and seventy-nine—

(*a*) if the company has branch banks beyond the limits of Europe, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted

to the head office of the company in the United Kingdom; and

(*b*) the balance sheet must be signed by the secretary or manager (if any), and where there are more than three directors of the company by at least three of those directors, and where there are not more than three directors by all the directors.

Sub-sects. (1)–(4) are taken without alteration from s. 19 (1)–(3), (5) of the Act of 1907, which repealed s. 23 of the Act of 1900.

Sub-sect. (5) is taken from ss. 7, 8 of the Companies Act, 1879, which was passed on August 15, 1879; s. 7 (except sub-sect. (5)) was repealed by the Act of 1907. See further, as to the duties of auditors, *Re London and General Bank*, [1895] 2 Ch. 673; *Leeds Building and Investment Co.* v. *Shepherd* (1887), 36 Ch. D. 787; *Re Kingston Cotton Mill Co.*, [1896] 2 Ch. 279; *Western Counties Steam Bakeries Co.*, [1897] 1 Ch. 617.

A company cannot by its regulations preclude its auditors from availing themselves of the information to which they are entitled under the Act: *Newton* v. *Birmingham Small Arms Co.*, [1906] 2 Ch. 378. In that case the company had attempted an "internal reserve fund," the particulars of which were not to be disclosed by the auditors to the shareholders or otherwise.

Rights of preference shareholders, &c. as to receipt and inspection of reports, &c.

114.—(1) Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance sheets of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

(2) This section shall not apply to a private company nor to a company registered before the first day of July nineteen hundred and eight.

This section reproduces s. 23 of the Act of 1907.

See s. 65, sub-sect. (2), p. 80, *ante*, as to reports sent before the statutory meeting.

As to private companies, see s. 121, p. 140, *post*.

Carrying on Business with less than the legal Minimum of Members.

Prohibition of carrying on business with fewer than seven or, in the case of a private company, two members.

115. If at any time the number of members of a company is reduced, in the case of a private company, below two, or, in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months, and is cognizant of the fact that it is carrying on business with fewer than two members, or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be sued for the same, without joinder in the action of any other member.

This section replaces s. 48 of the Act of 1862 as amended by s. 37 (4) of the Act of 1907 in respect of private companies.

For the purposes of this section the trustee of a bankrupt member or the representatives of a deceased member cannot be counted (*Re Bowling and Welby*, [1895] 1 Ch. 663); but members holding shares in a fiduciary capacity are to be counted (*Salomon* v. *Salomon & Co.*, [1897] A. C. 22).

As to private companies, see s. 121, p. 140, *post*.

Service and Authentication of Documents.

Service of documents on company.

116. A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

This section replaces s. 62 of the Act of 1862, the wording being shortened; see definition of "document" in s. 285, p. 270, *post*.

As to the registered office, see ss. 62, 63, pp. 78, 79, *ante*.

As to service of legal process on companies, see Yearly Practice, 1909, p. 47.

As to when service by post is to be deemed to be

effected in the case of a company governed by Table A, see Clause (110) of the table, p. 300, *post*. The general provision in s. 63 of the Act of 1862, as to how service by post was to be effected, has been repealed, the matter being dealt with by the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 26. As to service by post of proceedings in the High Court, see Ord. LXVII., rr. 2, 3, Yearly Practice, 1909, pp. 1055, 1056.

Authentication of documents.

117. A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be under its common seal.

This section reproduces, more concisely, s. 64 of the Act of 1862; see definition of "document" in s. 285, p. 270, *post*.

Tables and Forms.

Application and alteration of tables and forms.

118.—(1) The forms in the Third Schedule to this Act or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer.

(2) The Board of Trade may alter any of the tables and forms in the First Schedule to this Act, so that it does not increase the amount of fees payable to the registrar in the said schedule mentioned, and may alter or add to the forms in the said Third Schedule.

(3) Any such table or form, when altered, shall be published in the London Gazette, and thenceforth shall have the same force as if it were included in one of the Schedules to this Act, but no alteration made by the Board of Trade in Table A. in the said First Schedule shall affect any company registered before the alteration, or repeal, as respects that company, any portion of that table.

Forms A–D in the Third Schedule are forms of memorandum and articles of association, Form E is a form of the summary required by s. 26 (p. 50, *ante*), and Form F a form of licence by the Board for a company not formed for profit to hold land (s. 19, p. 45, *ante*). The tables in the First Schedule are Table A

(see s. 10 (2), p. 39, *ante*), Table B setting out the fees payable to the Registrar, and a Form of Statement required under s. 108 (p. 129, *supra*).

The wording of the section is based on that of s. 71 of the Act of 1862. That section gave power to the Board of Trade to make alterations in the Tables and Forms annexed to the Act of 1862, and the Table A under that Act was abolished for the future by Board of Trade orders made in the year 1906 (see [1906] W. N., pp. 233, 253), the first of which provided that "the table hereafter set forth shall, from and after the 1st day of October, 1906, be substituted for the said Table A contained in the said First Schedule" to the Act of 1862.

The Table A to the Consolidation Act, p. 276, *post*, is, from April 1, 1909, substituted for the Table A of 1906. But where companies have adopted either the Table A of 1862, or that of 1908, they continue to be regulated by the Table A which they have adopted, and not by any Table afterwards substituted for it. See sub-sect. (3), *supra*.

Arbitrations.

Arbitration between companies and others.

119.—(1) A company may by writing under its common seal agree to refer and may refer to arbitration, in accordance with the Railway Companies Arbitration Act, 1859, any existing or future difference between itself and any other company or person.

(2) Companies parties to the arbitration may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body.

(3) All the provisions of the Railway Companies Arbitration Act, 1859, shall apply to arbitrations between companies and persons in pursuance of this Act; and in the construction of those provisions "the companies" shall include companies under this Act.

This section repeats ss. 72, 73 of the Act of 1862. Arbitrations under the Act of 1859 (22 & 23 Vict.

c. 59) are not common, recourse being usually had to the Arbitration Act, 1889 (52 & 53 Vict. c. 49), which consolidated the enactments relating to arbitration (see title of Act), though it left the Act of 1859 untouched.

Compare the provisions of s. 192 (p. 195, *post*) as to arbitration under that section to determine the price to be paid for the interest of a dissenting shareholder.

For the Act of 1859, see Browne and Theobald's Law of Railways, 3rd ed., p. 428.

Power to compromise.

Power to compromise with creditors and members.

120.—(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the court may, on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) In this section the expression "company" means any company liable to be wound up under this Act.

This section replaces s. 2 of the Joint Stock Companies Arrangement Act, 1870 (33 & 34 Vict. c. 104), as extended by s. 24 of the Act of 1900, and s. 38 of the Act of 1907. See the decisions noted in Rawlins and Macnaghten on Companies, pp. 384–387. The new

section also slightly amends the law, as under the previous enactments it was doubtful whether, where a company was not in liquidation, the application for the order to summon meetings could be made by any person other than a creditor. Where the members or a class of them have or has no interest in the assets, their or its dissent may be disregarded : *Re Tea Corporation, Ltd.*, [1904] 1 Ch. 12.

Meaning of "Private Company."

Meaning of "private company."

121.—(1) For the purposes of this Act the expression "private company" means a company which by its articles—

(*a*) restricts the right to transfer its shares ; and

(*b*) limits the number of its members (exclusive of persons who are in the employment of the company) to fifty ; and

(*c*) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) A private company may, subject to anything contained in the memorandum or articles, by passing a special resolution and by filing with the registrar of companies such a statement in lieu of prospectus as the company, if a public company, would have had to file before allotting any of its shares or debentures, together with such a statutory declaration as the company, if a public company, would have had to file before commencing business, turn itself into a public company.

(3) Where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this section, be treated as a single member.

See s. 37 of the Act of 1907.

"Articles" means the company's articles as originally framed or as altered by special resolution : see s. 285, p. 270, *post*.

Many companies formed before 1907, have since been turned into private companies.

The Act contains no provision defining what amounts to a restriction of the right to transfer shares. Since the passing of the Act of 1907, it has been generally considered that a provision empowering the directors in their uncontrolled and uncontrollable discretion to refuse to register any transfer of shares to a transferee of whom they do not approve, is a sufficient restriction within s. 37.

As to statement in lieu of prospectus, see s. 82, p. 98, *ante;* and as to the statutory declaration to be filed before commencing business, see s. 87, p. 105, *ante.*

The privileges and advantages of a private company over a public company are as follows :—

(1) The minimum of membership is two instead of seven (s. 2).

(2) Directors appointed by the articles need not sign a consent to act, or the memorandum, or a contract to take shares (s. 72 (3)).

(3) No list of persons who have consented to be directors need be filed before registration of the company (*ibid.*).

(4) A first allotment of shares may be made regardless of the amount subscribed for and the proportion paid on each share (s. 85 (7)).

(5) It may commence business and exercise its borrowing powers immediately on incorporation (s. 87 (6)).

(6) No statement in lieu of prospectus need be filed before the first allotment of shares or debentures (s. 82 (2)).

(7) The terms of any contract may be varied before the statutory meeting is held, without the approval of the statutory meeting being required (s. 83).

(8) No statutory report need be forwarded to members or filed (s. 65 (10)); and apparently the report need not even be drawn up, though this is not clearly stated.

(9) The annual summary need not include a statement, in the form of a balance sheet audited by the company's auditors, containing a summary of the company's share capital, liabilities, and assets (s. 26 (3)).

(10) Holders of preference shares and debentures have no such statutory right to receive and inspect the company's balance sheets and auditors' and other reports as in the case of other companies (s. 114 (2)).

(11) The members cannot, so long as more than one remains, incur liability for the whole of the company's

debts on the ground that the number of members has been unduly reduced (s. 115).

(12) Reduction of membership is not a ground for winding up so long as more than one member remains (s. 129 (iv)).

The term "private company" had not, before 1907, been recognised by the Legislature, but it had been used by text-writers, and also by judges (see *Re British Seamless Paper Box Co.* (1881), 17 Ch. D. 467, 473; *Re George Newman & Co.*, [1895] 1 Ch. 674, 685; *Salomon* v. *Salomon & Co.*, [1897] A. C. 22, 43; *Re Wragg, Ltd.*, [1897] 1 Ch. 796, 807), although the legal status of such a company is that of a public company: *Re Sharp* (1890), 4 Ch. D. 286, 290; *Re Lysaght*, [1898] 1 Ch. 115, 122; *Trevor* v. *Whitworth* (1887), 12 App. Cas. 409, 434.

These companies were by the Act of 1900 exempted from many of the obligations imposed on companies which, unlike them, did invite the public to subscribe for their shares; but they have not been so leniently treated by the Act of 1907 or the Consolidation Act.

The words "subject to anything contained in the memorandum or articles" in sub-sect. (2) are puzzling. One can understand that if the memorandum forbids the turning of a private company into a public one, the prohibition is effective, as the memorandum cannot, except in certain particulars stated in the Act, be altered even as regards provisions in it which are not by statute required to be there; see *Ashbury* v. *Watson* (1885), 30 Ch. D. 376. But if the prohibition is merely contained in the articles, it may, it is conceived, be expunged by special resolution. It may be, however, that a separate resolution altering the articles must in such a case be passed before the special resolution referred to in sub-sect. (2) is passed. The sub-section does not say what the purport of that resolution is to be, but it must refer to a special resolution altering the articles by removing the restriction, limit, and prohibition referred to in sub-sect. (1). What will be the result if such an alteration is made without filing a statement in lieu of prospectus is a question which will no doubt arise for the determination of the courts.

The section may be used with advantage by a company which wishes to commence business or exercise its borrowing powers at once, although it does not intend to be always private.

Part IV.

WINDING UP.

Preliminary.

Modes of winding up.

122.—(1) The winding up of a company may be either—

(i) by the court; or

(ii) voluntary; or

(iii) subject to the supervision of the court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

This section is new, but is merely a preliminary introduction to the provisions which follow.

The special provisions relating to winding up by the court are ss. 129–181.

The special provisions as to voluntary winding up are ss. 182–198.

The special provisions as to winding up under supervision are ss. 199–204.

The supplementary provisions in ss. 205–236 are mostly if not entirely applicable to liquidation of every kind.

As to the meaning of "the court," see s. 131, p. 150, *post*.

Contributories.

Liability as contributories of present and past members.

123.—(1) In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, with the qualifications following (that is to say):—

(i) A past member shall not be liable to contribute if he has ceased to be a member for

one year or upwards before the commencement of the winding up:

(ii) A past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member:

(iii) A past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act:

(iv) In the case of a company limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member:

(v) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up:

(vi) Nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract:

(vii) A sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a limited company, any director or manager, whether past or present, whose liability is, in pursuance of this Act, unlimited, shall,

in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company: Provided that—

(i) A past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up:

(ii) A past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office:

(iii) Subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up.

(3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Sub-sect. (1) replaces s. 38 of the Act of 1862; sub-sect. (2) replaces the amending s. 5 of the Act of 1867; and sub-sect. (3) combines the provisions of ss. 90 and 134 of the Act of 1862.

Sub-sect. (3) is an extension of the liabilities limited by sub-sect. (1) (v) of members of a company limited by guarantee in cases where there is a share capital.

See the cases on s. 38 of the Act of 1862 cited in Rawlins and Macnaghten on Companies, pp. 192–195. For the definition of "contributory," see s. 124.

Definition of contributory.

124. The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining and in all proceedings prior to the

final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

This section replaces s. 74 of the Act of 1862.

Nature of liability of contributory.

125. The liability of a contributory shall create a debt (in England and Ireland of the nature of a specialty) accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

See ss. 75, 90, 134 of the Act of 1862. As to the debt being in the nature of a specialty, see note to s. 14 (2), p. 43, *ante*.

See cases on s. 75 of the Act of 1862 in Rawlins and Macnaghten on Companies, pp. 287, 288.

As to calls, see ss. 165, 166, 168, 173, *post*.

Contributories in case of death of member.

126.—(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives and his heirs and devisees, shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) Where the personal representatives are placed on the list of contributories, the heirs or devisees need not be added, but, except in the case of heirs or devisees of any such real estate in England, they may be added as and when the court thinks fit.

(3) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the personal and real estates of the deceased contributory, or either of them, and of compelling payment thereout of the money due.

Sub-sect. (1) reproduces, with slight verbal changes, s. 76 of the Act of 1862, as to which see Rawlins and Macnaghten on Companies, pp. 288–290.

Sub-sect. (2) replaces the latter part of s. 99 of the Act of 1862, the exception of heirs or devisees of real estate in England being added in view of the Land

Transfer Act, 1897 (60 & 61 Vict. c. 65), ss. 1, 2, which make real estate (with some exceptions) assets in the hands of personal representatives for the payment of debts. The Act of 1897 is to be construed (s. 26) as one with the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), which does not (s. 2) apply to Scotland or Ireland. The meaning and effect of the word "such" in sub-sect. (2), if any, is obscure. It is suggested that "such real estate in England as devolves to and becomes vested in the personal representatives under s. 1 of the Land Transfer Act, 1897," is what was intended; but as the sub-section stands no such meaning can be read into the words.

Sub-sect. (3) replaces, with slight changes of wording, s. 105 of the Act of 1862.

Contributories in case of bankruptcy of member.

127. If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories, then—

(1) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

(2) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

Sub-sect. (1) is taken from s. 77, and sub-sect. (2) from the latter part of s. 75, of the Act of 1862.

The practical effect of the section is restricted by the fact that a trustee in bankruptcy will in most cases disclaim any shares to which a liability for calls attaches, under the provisions of the Bankruptcy Acts, 1883 and 1890, as to which see Halsbury, Laws of England, Vol. II., pp. 191–196; and see Rawlins and Macnaghten on Companies, pp. 288, 290, 291.

Proof in bankruptcy in respect of the uncalled amount of a share, and payment of a dividend of less than 20*s.* in the pound on the amount, do not make the share fully paid up so as to entitle the trustee to share in surplus assets of the company in winding up until the amount

paid on shares held by other persons has been reduced to that which has in fact been paid on the bankrupt's share; see *Re West Coast Gold Fields, Ltd.*, [1906] 1 Ch. 1.

Provision as to married women.

128.—(1) The husband of a female contributory married before the date of the commencement of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881, as the case may be, shall, during the continuance of the marriage, be liable, as respects any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly.

(2) Subject as aforesaid, nothing in this Act shall affect the provisions of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881.

This section reproduces the effect of s. 78 of the Act of 1862, with alterations entailed by the Acts 45 & 46 Vict. c. 15 and 44 & 45 Vict. c. 21. See *Belcher's Case*, [1883] W. N. 94.

Winding up by Court.

Circumstances in which company may be wound up by court.

129. A company may be wound up by the court—

(i) if the company has by special resolution resolved that the company be wound up by the court:

(ii) if default is made in filing the statutory report or in holding the statutory meeting:

(iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year:

(iv) if the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven:

(v) if the company is unable to pay its debts:

(vi) if the court is of opinion that it is just and equitable that the company should be wound up.

See s. 79 of the Act of 1862.

Paragraph (ii) is taken from s. 12 (8) of the Act of 1900 (see s. 65 (9), p. 82, *ante*); paragraph (iv) embodies the provision contained in s. 37 (4) of the Act of 1907 (see s. 121, p. 140, *ante*) as to private companies.

As to the courts having jurisdiction, see s. 131, p. 150, *post*.

A special resolution is defined in s. 69, p. 84, *ante*.

As to the statutory report and statutory meeting, see s. 65, p. 80, *ante*.

A winding-up order was made in the case of a company which had not commenced business within a year in *Re Caementium (Parent) Co.*, [1908] W. N. 257.

As to when a company is incorporated, see s. 16, p. 43, *ante*, and as to the commencement of business, see s. 87 p. 105, *ante*, and Rawlins and Macnaghten on Companies p. 293.

A company with less than the required number of members cannot carry on business without involving its members in liability; see s. 115, p. 136, *ante*.

As to when a company is to be deemed unable to pay its debts, see s. 130.

For cases in which the court will be of opinion that it is "just and equitable" to wind a company up, see Rawlins and Macnaghten, pp. 293–295; *Re Donald Gold Co.* (1898), 14 T. L. R. 204; *Re Alfred Melson & Co.*, [1906] 1 Ch. 841; *Re Chic, Ltd.*, [1905] 2 Ch. 345. And see *Stephens* v. *Mysore Reefs (Kangundy) Mining Co.*, [1902] 1 Ch. 745; *Pedlar* v. *Road Block Gold Mines of India, Ltd.*, [1905] 2 Ch. 427; *Butler* v. *Northern Territories Mines of Australia, Ltd.* (1906), 23 T. L. R. 179, as bearing on the question whether a company should be wound up because its substratum has gone.

A temporary deadlock is not a ground for making a winding-up order (*Re Farrier's Alliance, Ltd.* (1907), 51 Sol. Jour. 172).

Company when deemed unable to pay its debts.

130. A company shall be deemed to be unable to pay its debts—

(i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at its registered office, a demand under his hand requiring the company to pay the sum so

due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or

(ii) if, in England or Ireland, execution or other process issued on a judgment decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(iii) if, in Scotland, the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made; or

(iv) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

See s. 80 of the Act of 1862, which is reproduced with slight verbal changes: see Rawlins and Macnaghten, pp. 295–297. It is submitted that a slight ambiguity is caused by the omission of the words "against the company" in paragraph (ii); for instance, execution on a judgment in favour of a creditor of the company against an officer of the company might be returned unsatisfied, but this would be no reason for deeming the company unable to pay its debts.

Paragraph (iv) incorporates the provision, as to contingent and prospective liabilities, of s. 28 of the Act of 1907.

The limit of £50 has been applied by the court not only in the case of the statutory demand referred to in sub-sect. (1), but also in the cases referred to in the other sub-sections; and an order has been generally refused on the petition of a creditor with a debt of £50 unless supported by others; see *Re Herbert Standring & Co.*, [1895] W. N. 99; *Re Leyton and Walthamstow Cycle Co.*, [1901] W. N. 225.

Jurisdiction to wind up

131.—(1) The courts having jurisdiction to wind up companies registered in England shall be the

High Court, the chancery courts of the counties palatine of Lancaster and Durham, and the county courts. companies in England.

(2) Where the amount of the share capital of a company paid up or credited as paid up exceeds ten thousand pounds, a petition to wind up the company shall be presented to the High Court, or, in the case of a company whose registered office is situate within the jurisdiction of either of the palatine courts aforesaid, either to the High Court or to the palatine court having jurisdiction.

(3) Where the amount of the share capital of a company paid up or credited as paid up does not exceed ten thousand pounds, and the registered office of the company is situated within the jurisdiction of a county court having jurisdiction under this Act, a petition to wind up the company shall be presented to that county court.

(4) Where a company is formed for working mines within the stannaries and is not shown to be actually working mines beyond the limits of the stannaries, or to be engaged in any other undertaking beyond those limits, or to have entered into a contract for such working or undertaking, a petition to wind up the company shall be presented to the court exercising the stannaries jurisdiction whatever may be the amount of the capital of the company and wherever the registered office of the company is situate.

(5) The Lord Chancellor may by order exclude a county court from having jurisdiction under this Act, and for the purposes of that jurisdiction may attach its district, or any part thereof, to the High Court or any other county court, and may revoke or vary any such order or any like order made under the Companies (Winding Up) Act, 1890.

In exercising his powers under this section the Lord Chancellor shall provide that a county court shall not have jurisdiction under this Act unless it has for the time being jurisdiction in bankruptcy.

An order made under this provision shall not affect any jurisdiction or powers vested in any

county court under or by virtue of the Stannaries Jurisdiction (Abolition) Act, 1896.

(6) Every court in England having jurisdiction under this Act to wind up a company shall for the purposes of that jurisdiction have all the powers of the High Court, and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of the judge thereof or otherwise in relation to the winding up of a company.

(7) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.

(8) For the purposes of this section the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

This section embodies the provisions of s. 1 of the Companies (Winding up) Act, 1890 (53 & 54 Vict. c. 63), and the definition of "registered office" in s. 32 (3) of that Act, with the necessary alterations in view of the transfer of the Stannaries jurisdiction to the county court of Cornwall; see Stannaries Court (Abolition) Act, 1896 (59 & 60 Vict. c. 45), s. 1, and Order of the Lord Chancellor made thereunder, dated December 16, 1896. It may be noted that the Act of 1896 (59 & 60 Vict. c. 45) is given a wrong title in sub-sect. (5), the word "Jurisdiction" being substituted for "Court."

See Rawlins and Macnaghten on Companies, pp. 298–301.

The court having jurisdiction to wind up a registered unlimited company which has no share capital is not stated; but such a company can be wound up in the High Court (*Re North of England Iron Steamship Insurance Association*, [1900] 1 Ch. 481); as also can a guarantee company without a share capital (*Re Monmouthshire and South Wales Employers' Mutual Indemnity Society*, [1909] W. N. 6). Companies registered under the Joint Stock Companies Acts (see s. 285, p. 270, *post*), or the Act of 1862, or the Consolidation Act, are registered companies. As to what unregistered companies are, and the special provisions as to their winding up, see Part VIII., ss. 267 *et seq.*, *post*.

Under existing rules and orders, which remain in force until replaced by new ones, the county courts within the London Bankruptcy Jurisdiction have no winding-up jurisdiction even where the paid-up capital of the company is under £10,000, and outside the area of that jurisdiction only some county courts have jurisdiction in such cases.

As to the meaning of "prescribed" in sub-sect. (6), see s. 285, p. 271, *post*.

When proceedings are taken in the wrong court, the petition may be dismissed, or retained, or transferred to the proper court; see s. 133, p. 154, *post*, and Rawlins and Macnaghten on Companies, pp. 301, 302. See also similar provisions in the Bankruptcy Act, 1883, and the cases thereon; Halsbury, Laws of England, Vol. II. pp. 54, 312.

The object of sub-sect. (8) is probably to prevent changes of the situation of the office placing difficulties in the way of petitioners. No form of petition hitherto officially authorised has contained any statement as to the office except its existing situation.

Conduct of winding-up business in High Court in England.

132. Subject to general rules and to orders of transfer made under the authority of the Supreme Court of Judicature Act, 1873, and the Acts amending it, the jurisdiction to wind up companies of the High Court in England under this Act shall, as the Lord Chancellor may from time to time by general order direct, be exercised, either generally or in specified classes of cases, either by such judge or judges of the Chancery Division of the High Court as the Lord Chancellor may assign to exercise that jurisdiction, or by the judge who, for the time being, exercises the bankruptcy jurisdiction of the High Court.

See s. 2 of the Companies (Winding up) Act, 1890, which Act only applied to companies registered in England or Wales (s. 31 (3)).

For some time after the coming into operation of the Act of 1890, the winding-up jurisdiction of the High Court was left with the ordinary judges of the Chancery Division. Subsequently it was transferred to a judge of the Queen's Bench Division, who was appointed an Additional Judge of the Chancery Division. From him

it passed to another Queen's Bench judge, similarly appointed an Additional Chancery Judge, and in 1901 it was assigned to two judges of the Chancery Division, who exercised it in turn. It is now exercised in turn by Swinfen Eady and Neville, JJ.

Transfer of proceedings.

133.—(1) The winding up of a company by the court in England or any proceedings in the winding up may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one court to another court, or may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced.

(2) The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction under this Act, or, as regards any case within the jurisdiction of any other court, by the judge of that court.

(3) If any question arises in any winding-up proceeding in a county court which all the parties to the proceeding, or which one of them and the judge of the court, desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

This section replaces s. 3 of the Companies (Winding up) Act, 1890, the restriction to English companies (s. 31 (3)) being incorporated, and the reference to the Stannaries Court omitted.

See Rawlins and Macnaghten on Companies, p. 302.

See also Halsbury, Laws of England, Vol. II. pp. 54, 312, as to similar provisions in the Bankruptcy Act, 1883.

Jurisdiction to wind up companies in Ireland.

134. The court having jurisdiction to wind up companies registered in Ireland shall be the High Court:

Provided that where the High Court in Ireland makes an order for winding up a company it may, if it thinks fit, direct that all subsequent proceedings in the winding up be had in the court of bankruptcy having jurisdiction in the place in which the registered office of the company is situate; and thereupon those proceedings shall be taken in that court of bankruptcy accordingly, and that court shall, for the purposes of the winding up, have all the powers of the High Court in Ireland.

This section replaces such parts of s. 81 of the Act of 1862 as were not repealed by the Statute Law Revision Act, 1893 (56 Vict. c. 14), with slight changes of form.

Jurisdiction to wind up companies in Scotland.

135. The court having jurisdiction to wind up companies registered in Scotland shall be the Court of Session in either division thereof, or, in the event of a remit to a permanent Lord Ordinary, that Lord Ordinary during session, and in time of vacation the Lord Ordinary on the bills.

This section reproduces a part of s. 81 of the Act of 1862, as explained in s. 5 of the Companies Act, 1886 (49 Vict. c. 23). The part of s. 81 here reproduced was, however, included in the portion repealed by the Statute Law Revision Act, 1893, though it may perhaps be argued that the jurisdiction was in fact preserved on account of the reference to it in the Act of 1886 (see third proviso to s. 1 of the Statute Law Revision Act, 1893).

Power in Scotland to remit winding up to Lord Ordinary.

136. Where the court in Scotland makes a winding-up order, it may, if it thinks fit, at any time direct all subsequent proceedings in the winding up to be taken before one of the permanent Lords Ordinary, and remit the winding up to him accordingly, and thereupon that Lord Ordinary shall, for the purposes of the winding up, have all the powers and jurisdiction of the court:

Provided that the Lord Ordinary may report to the division of the court any matter which may arise in the course of the winding up.

This section is taken from s. 6 of the Companies Act, 1886.

Provisions as to applications for winding up.

137.—(1) An application to the court for the winding up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately: Provided that

(*a*) A contributory shall not be entitled to present a petition for winding up a company unless—

(i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or

(ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder; and

(*b*) A petition for winding up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and

(*c*) The court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a primâ facie case for winding up has been established to the satisfaction of the court.

(2) Where a company is being wound up voluntarily or subject to supervision in England, a petition may be presented by the official receiver attached to the court, as well as by any other person authorised in that behalf under the other provisions of this

section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

(3) Where under the provisions of this Part of this Act any person as being the husband of a female contributory is himself a contributory, and a share has during the whole or any part of the six months been held by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

This section consolidates with some amendment provisions formerly contained in s. 82 of the Act of 1862, s. 40 of the Act of 1867, s. 14 of the Companies (Winding up) Act, 1890, s. 12 (8) of the Act of 1900, and s. 28 of the Act of 1907; the restriction "in England" in sub-sect. (2) being derived from s. 31 (3) of the Act of 1890. See Rawlins and Macnaghten on Companies, pp. 303–308, 421.

As to petitions for winding up by the court, where the company is already in voluntary winding up, see also s. 197, p. 201, *post*.

Effect of winding-up order.

138. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

See last sentence of s. 82 of the Act of 1862. The section means that the winding up when ordered and by whomsoever procured shall enure for the benefit of both creditors and contributories; but it is not always for the benefit of the latter.

Commencement of winding up by court.

139. A winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

This was formerly s. 84 of the Act of 1862. The provision only operates, by relation back, if a winding-up order is made. See cases cited in Rawlins and

Macnaghten on Companies, p. 311, and *Kent* v. *Freehold Land and Brickmaking Co.* (1868), 3 Ch. App. 493, 494. See also note to s. 183, p. 190, *post.*

As to the avoidance of dispositions of property and other transactions after the commencement of the winding up, and the power of the court to alter this result, see s. 205 (2), p. 206, *post.*

Power to stay or restrain proceedings against company.

140. At any time after the presentation of a petition for winding up, and before a winding-up order has been made, the company, or any creditor or contributory, may—

(*a*) where any action or proceeding against the company is pending in the High Court or Court of Appeal in England or Ireland, apply to the court in which the action or proceeding is pending for a stay of proceedings therein; and

(*b*) where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding;

and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

This section is based on the first part of s. 85 of the Act of 1862; but the provision of the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 24 (5)—re-enacted as to Ireland by the Judicature Act, 1877 (40 & 41 Vict. c. 57), s. 27 (5)—that no proceedings in the High Court or Court of Appeal shall be restrained by prohibition or injunction, has rendered alteration necessary. The result is that proceedings in any division of the High Court or on appeal may be stayed on application to that division or to the Court of Appeal (paragraph (*a*), and see Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 11 (1)); and proceedings in any other court may be stayed on application to the winding-up court. See Rawlins and Macnaughten on Companies, pp. 311, 312.

If the petition is in the county court, that court may restrain further proceedings in a Palatine Court or in any other county court.

Powers of court on hearing petition.

141.—(1) On hearing the petition the court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it deems just, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the court may order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

The first part of sub-sect. (1) is taken from s. 86 of the Act of 1862 (as to which see Rawlins and Macnaghten on Companies, pp. 313, 314) and s. 29 of the Act of 1907. The second part is a statutory recognition of the soundness of the decisions in *Re Chic, Ltd.*, [1905] 2 Ch. 345; *Re Alfred Melson & Co.*, [1906] 1 Ch 841; and *Re Crigglestone Coal Co.*, [1906] 2 Ch. 327.

Sub-sect. (2) re-enacts the final provision of s. 12 (8) of the Act of 1900.

Actions stayed on winding-up order.

142. When a winding-up order has been made, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.

See s. 87 of the Act of 1862, and Rawlins and Macnaghten on Companies, pp. 314–318.

"The court" here means the court which is winding up the company.

Although the section apparently *per se* stops all actions, it is necessary, or at any rate advisable, to apply to have them stayed or restrained.

Copy of order to be forwarded to registrar.

143. On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company to the registrar of companies, who shall make a minute thereof in his books relating to the company.

See s. 88 of the Act of 1862.

Under the existing rules other copies have to be sent elsewhere. One copy must be sent to the official receiver, who, as soon as the order is made, *i.e.* pronounced, becomes *ex officio* the provisional liquidator of the company (see s. 149 (3)) and has to take possession of the company's assets.

Power of court to stay winding up.

144. The court may at any time after an order for winding up, on the application of any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

See s. 89 of the Act of 1862 and cases cited in Rawlins and Macnaghten on Companies, p. 319.

The principles guiding the court on applications to stay proceedings are those which guide the court on applications to rescind receiving orders or to annul bankruptcies (*Re Telescriptor, Ltd.*, [1903] 2 Ch. 174); and see Halsbury, Laws of England, Vol. II. pp. 90–93.

Court may have regard to wishes of creditors or contributories.

145. The court may, as to all matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

This section is taken from the first part of s. 91 of the Act of 1862 and s. 149 of the same Act: see Rawlins and Macnaghten on Companies, pp. 320, 321; *Re Bishop & Sons, Ltd.*, [1900] 2 Ch. 254; *Re Hermann Lichtenstein & Co.*, [1907] 23 T. L. R. 424.

And see also, as to the wishes of creditors and contributories, ss. 201, 219, pp. 204, 219, *post.*

Official Receiver.

Definition of official receiver.

146.—(1) For the purposes of this Act so far as it relates to the winding up of companies by the court in England, the term "official receiver" shall mean the official receiver, if any, attached to the court for bankruptcy purposes, or, if there is more than one such official receiver, then such one of them as the Board of Trade may appoint, or, if there

is no such official receiver, then an officer appointed for the purpose by the Board of Trade.

(2) Any such officer shall for the purpose of his duties under this Act be styled the official receiver.

See s. 4 (2) of the Companies (Winding up) Act, 1890, the operation of which was limited to companies registered in England or Wales (s. 31 (3)).

As a matter of fact, the official receiver in companies' liquidation in London is a distinct person from the official receiver in bankruptcy. In the provinces the official receiver in bankruptcy is generally, if not invariably, the official receiver in companies' liquidation.

Statement of company's affairs to be submitted to official receiver.

147.—(1) Where the court in England has made a winding-up order, there shall be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts, and liabilities, the names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company, or having taken part in the formation of the company at any time within one year before the winding-up order, as the official receiver, subject to the direction of the court, may require to submit and verify the same.

(3) The statement shall be submitted within fourteen days from the date of the order, or within such extended time as the official receiver or the court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver, out of the assets of the company, such costs

and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall be punishable accordingly on the application of the liquidator or of the official receiver.

This section reproduces the provisions of s. 7 of the Companies (Winding up) Act, 1890.

A *de facto* director is subject to the obligations imposed by sub-sect. (2): see s. 285, p. 271, *post*. *Re New Par Consols, Ltd.*, [1898] 1 Q. B. 573, 576.

Report by official receiver.

148.—(1) Where the court in England has made a winding-up order, the official receiver shall, as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the court—

(*a*) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and

(*b*) if the company has failed, as to the causes of the failure; and

(*c*) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the

manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

This section repeats s. 8 (1) and (2) of the Companies (Winding up) Act, 1890; see Rawlins and Macnaghten on Companies, pp. 414, 415.

The "further report" under sub-sect. (2) is the one on which application is made for a public examination under s. 175 (see p. 183, *post*); see *Ex parte Barnes*, [1896] A. C. 146.

The further report is "absolutely privileged" as regards libel proceedings by persons therein named: *Bottomley* v. *Brougham*, [1908] 1 K. B. 584.

Liquidators.

Appointment, remuneration, and title of liquidators.

149.—(1) For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

(2) The court may make such an appointment provisionally at any time after the presentation of a petition and before (where the proceedings are in England) the making of an order for winding up, or (where the proceedings are in Scotland or Ireland) the first appointment of liquidators.

(3) Where the proceedings are in England—

(*a*) If a provisional liquidator is appointed before the making of a winding-up order, the official receiver or any other fit person may be appointed:

(*b*) On a winding-up order being made the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such:

(*c*) When a person other than the official receiver is appointed liquidator he shall not be capable of acting as liquidator until he has notified his appointment to the registrar of companies and given security in the prescribed manner to the satisfaction of the Board of Trade.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) In a winding up in Scotland or Ireland the court may determine whether any and what security is to be given by a liquidator on his appointment.

(6) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

(7) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

In a winding up in England the official receiver shall by virtue of his office be the liquidator during the vacancy.

(8) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct; and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(9) A liquidator shall be described as follows (that is to say):—

(*a*) in a winding up in England, where a person other than the official receiver is liquidator, by the style of the liquidator, and, where the official receiver is liquidator, by the style of the official receiver and liquidator, and

(*b*) in a winding up in Scotland or Ireland, by the style of the official liquidator,

of the particular company in respect of which he is appointed, and not by his individual name.

(10) The acts of a liquidator shall be valid

notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

This section consolidates provisions previously scattered throughout a large number of enactments.

Sub-sect. (1) is based on the opening words of ss. 92 and 94 of the Act of 1862.

Sub-sect. (2) is taken from s. 85 of the Act of 1862, and also (as to England) s. 4 (5) of the Winding up Act of 1890.

Sub-sect. (3) (*a*) replaces s. 4 (5) of the Winding up Act of 1890, as explained in *Re Mercantile Bank of Australia*, [1892] 2 Ch. 204, 209, and other cases (see Rawlins and Macnaghten on Companies, p. 410).

Sub-sect. (3) (*b*) embodies s. 4 (1) of the Winding up Act of 1890; see *Re North Wales Gunpowder Co.*, [1892] 2 Q. B. 220; *Re John Reid & Sons, Ltd.*, [1900] 2 Q. B. 634.

Paragraph (*c*) is taken from s. 4 (3) of the Winding up Act of 1890.

Sub-sect. (4) is from s. 92 of the Act of 1862; and sub-sect. (5) is from the same section, the provision being repealed as to England and Wales by s. 33 of the Winding up Act of 1890.

Sub-sects. (6) and (7) are taken from s. 93 of the Act of 1862, as modified by s. 4 (4) of the Act of 1890.

Sub-sect. (8) repeats the provisions as to remuneration contained in s. 93 of the Act of 1862.

Sub-sect. (9) repeats the provisions contained in s. 4 (3) of the Act of 1890, and r. 59 of the Companies (Winding up) Rules, 1903, as to England, and s. 94 of the 1862 Act as to Scotland and Ireland.

Sub-sect. (10) is taken from the last provision of s. 67 in the Act of 1862.

See, as to the repealed enactments, Rawlins and Macnaghten on Companies, pp. 312, 321–324, 408–410.

On making a winding-up order the court cannot appoint as liquidator any person other than the official receiver: *Re John Reid & Sons, Ltd., supra.*

Custody of company's property.

150.—(1) In a winding up by the court the liquidator shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.

(2) In a winding up by the court in Scotland or Ireland, if and so long as there is no liquidator, all

the property of the company shall be deemed to be in the custody of the court.

See ss. 94, 92, of the Act of 1862. In a winding up in England there can never be "no liquidator," the official receiver acting as such if no other is appointed, or on any vacancy (s. 149 (3) (*b*), (7), *ante*).

The rules require the official receiver to take possession of the company's property as soon as the order is pronounced.

Powers of liquidator.

151.—(1) The liquidator in a winding up by the court shall have power, in the case of a winding up in England with the sanction either of the court or of the committee of inspection, and in the case of a winding up in Scotland or Ireland with the sanction of the court—

(*a*) to bring or defend any action or other legal proceeding in the name and on behalf of the company:

(*b*) to carry on the business of the company, so far as may be necessary for the beneficial winding up thereof:

(*c*) in the case of a winding up in England, to employ a solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself; but the sanction in this case must be obtained before the employment, except in cases of urgency, and in those cases it must be shown that no undue delay took place in obtaining the sanction:

(*d*) in the case of a winding up in Scotland or Ireland, to appoint a solicitor or law agent to assist him in the performance of his duties.

(2) The liquidator in a winding up by the court shall have power, but (subject to the provisions of this section) in the case of a winding up in Scotland or Ireland only with the sanction of the court,—

(*a*) To sell the real and personal property, and things in action of the company by public auction or private contract, with power to

transfer the whole thereof to any person or company, or to sell the same in parcels:

(*b*) To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary the company's seal:

(*c*) To prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors:

(*d*) To draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or indorsed by or on behalf of the company in the course of its business:

(*e*) To raise on the security of the assets of the company any money requisite:

(*f*) To take out in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company; and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself:

(*g*) To do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the court in England of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply

to the court with respect to any exercise or proposed exercise of any of those powers.

(4) In the case of a winding up in Scotland or Ireland the court may provide by any order that the liquidator may exercise any of the above powers, except the power to appoint a solicitor or law agent, without the sanction or intervention of the court.

(5) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

(6) In a winding up by the court in Scotland the liquidator shall, subject to rules made under this Act, have the same powers as a trustee on a bankrupt estate.

Sub-sect. (1) is taken from ss. 95 and 97 of the Act of 1862, as amended in respect to companies registered in England by s. 12 (1), (4) of the Winding up Act of 1890.

Sub-sect. (2) is taken from s. 95 as extended, in regard to English companies, by s. 12 (2) of the Act of 1890.

Sub-sect. (3) repeats s. 12 (3) of the Act of 1890.

Sub-sects. (4) and (5) give the effect of s. 96 of the Act of 1862 with necessary alterations.

Sub-sect. (6) is taken from s. 171 of the Act of 1862.

See, for decisions under s. 95 of the Act of 1862 and s. 12 of the Act of 1890, Rawlins and Macnaghten on Companies, pp. 325–329, 420.

The official receiver while acting as provisional liquidator, or during any vacancy in the office of liquidator, may settle the list of contributories, and, no doubt exercise many, if not all, of the powers conferred by s. 151 on the liquidator; see *Re English Bank of the River Plate*, [1892] 1 Ch. 391.

Meetings of creditors and contributories in English winding up.

152.—(1) When a winding-up order has been made by the court in England, the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of—

(*a*) determining whether or not an application is to be made to the court for appointing a

liquidator in the place of the official receiver; and

(*b*) determining whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed.

(2) The court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions of this section, the court shall decide the difference and make such order thereon as the court may think fit.

(3) In case a liquidator is not appointed by the court the official receiver shall be the liquidator of the company.

This section reproduces s. 6 of the Winding up Act of 1890. A "difference" under sub-sect. (2) arises where the resolutions passed at both meetings are not either the same or identical in effect, and not as decided in *Re Johannesberg Land & Gold Trust Co.*, [1892] 1 Ch. 583, under early rules of court.

Liquidator to give information to official receiver.

153. Where in the winding up of a company by the court in England a person other than the official receiver is appointed liquidator he shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

This section replaces the latter part of s. 4 (3) of the Winding up Act, 1890.

As to the duty of the official receiver to give information to the person who succeeds him as liquidator, see *Re Lake George Mines, Ltd.*, [1904] 1 Ch. 803.

Payments of liquidator in English winding up into bank.

154.—(1) Every liquidator of a company which is being wound up by the court in England shall, in such manner and at such times as the Board of

Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board shall furnish him with a certificate of receipt of the money so paid:

Provided that, if the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Board shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum, and shall be liable to disallowance of all or such part of his remuneration as the Board may think just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up by the court in England shall not pay any sums received by him as liquidator into his private banking account.

This section repeats the provisions of s. 11 (2)–(4), (6) of the Winding up Act of 1890.

The Companies Liquidation Account under s. 154 (1) is in continuation of the account with the same name under the Winding up Act, 1890: see s. 289 (6), p. 274, *post*.

Audit of liquidator's

155.—(1) Every liquidator of a company which is being wound up by the court in England shall, at

such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as liquidator. accounts in English winding up.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The Board shall cause the account to be audited and for the purpose of the audit the liquidator shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Board, and the other copy shall be filed with the court, and each copy shall be open to the inspection of any creditor, or of any person interested.

(5) The Board shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

This section gives the effect of s. 20 of the Winding up Act, 1890.

156. Every liquidator of a company which is being wound up by the court in England shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books. Books to be kept by liquidator in English winding up.

This was s. 21 of the Winding up Act, 1890.

"Prescribed" means prescribed by general rules; see s. 285, p. 271, *post.*

157.—(1) When the liquidator of a company which is being wound up by the court in England has realised all the property of the company, or so Release of liquidators in England.

much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor, or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.

(2) Where the release of a liquidator is withheld the court may, on the application of any creditor, or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the Board of Trade releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

See s. 22 of the Winding up Act, 1890, which is repeated *verbatim* with the addition of the restriction to England taken from s. 31 (3). The old section was taken in substance from provisions of the Bankruptcy Act, 1883, as to release of the trustee, as to which see Halsbury, Laws of England, Vol. II. pp. 112, 113.

As to the liability of a liquidator who distributes the assets without regard to creditors' rights, see *Pulsford* v. *Devenish*, [1903] 2 Ch. 625.

158.—(1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court in England shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection. Exercise and control of liquidator's powers in England.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one tenth in value of the creditors or contributories as the case may be.

(3) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

This section embodies ss. 23 and 24 of the Winding up Act of 1890, with no material change of language.

"Prescribed" means prescribed by general rules (s. 285).

159.—(1) The Board of Trade shall take cognizance of the conduct of liquidators of companies which are being wound up by the court in England, and, if a liquidator does not faithfully perform his Control of Board of Trade over liquidators in England.

duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Board by any creditor or contributory in regard thereto, the Board shall inquire into the matter, and take such action thereon as they may think expedient.

(2) The Board may at any time require any liquidator of a company which is being wound up by the court in England to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Board think fit, apply to the court to examine him or any other person on oath concerning the winding up.

(3) The Board may also direct a local investigation to be made of the books and vouchers of the liquidator.

See s. 25 of the Winding up Act, 1890, which is repeated practically unaltered.

Committee of Inspection, Special Manager, Receiver.

Committee of inspection in English winding up.

160.—(1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the court.

(2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.

(4) Any member of the committee may resign by

notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) Any member of the committee may be removed by an ordinary resolution at a meeting of creditors (if he represents creditors), or of contributories (if he represents contributories) of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

(9) If there is no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Board of Trade on the application of the liquidator.

This section repeats s. 9 of the Winding up Act, 1890, with immaterial changes of wording.

Power in England to appoint special manager.

161.—(1) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court to, and the court may on such application, appoint a special manager thereof to act during such time as the court may direct, with such powers,

including any of the powers of a receiver or manager, as may be entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the Board of Trade direct.

(3) The special manager shall receive such remuneration as may be fixed by the court.

This section repeats s. 5 of the Winding up Act, 1890. Where a winding-up petition has been presented and it is necessary that the company's business should be continued (*e.g.* where the company is in voluntary winding up and there is no liquidator), the court will appoint the official receiver provisional liquidator until the winding-up order, restricting his powers to making application to the court for the appointment of a special manager: see *Re Bound & Co.*, [1893] W. N. 21.

Power in England to appoint official receiver as receiver for debenture holders or creditors.

162. Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court in England, the official receiver may be so appointed.

This was formerly s. 4 (6) of the Winding up Act, 1890; as to which see Rawlins and Macnaghten on Companies, pp. 410, 411.

The appointment has been seldom made, and it is believed that official receivers do not seek for such appointments as they interfere with the official receiver's other duties.

Ordinary Powers of Court.

Settlement of list of contributories and application of assets.

163.—(1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are

contributories as being representatives of or liable to the debts of others.

This section combines s. 98 and the first part of s. 99 of the Act of 1862; see Rawlins and Macnaghten on Companies, pp. 330–334.

As to contributories who are representatives, etc., see ss. 126–128, pp. 146–148, *ante*.

As to the meaning of "contributory," see s. 124, p. 145, *ante*.

As to placing the transferor of shares on the list where the transfer is a colourable transaction entered into to escape liability, see *Re Discoverers' Finance Corporation*, [1908] 1 Ch. 141, 334.

As to transfers to infants, see *Re National Bank of Wales, Ltd., Massey and Giffin's Case*, [1907] 1 Ch. 582.

Power to require delivery of property.

164. The court may, at any time after making a winding-up order, require any contributory for the time being settled on the list of contributories, and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to the liquidator any money, property, or books and papers in his hands to which the company is primâ facie entitled.

This section replaces s. 100 of the Act of 1862 with slight variations of wording; see Rawlins and Macnaghten on Companies, pp. 334, 335.

See interpretation of "books and papers" in s. 285, p. 270, *post*.

Power to order payment of debts by contributory.

165.—(1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to

him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and may, in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

(3) But in the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

This section combines s. 101 of the Act of 1862 and s. 6 of the Act of 1867; see Rawlins and Macnaghten on Companies, pp. 335–337. The words "or to his estate" at the end of sub-sect. (2) did not occur in s. 6 of the earlier Act, but have been inserted to give effect to the apparent intention of that enactment.

Power of court to make calls.

166.—(1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

See s. 102 of the Act of 1862; Rawlins and Macnaghten on Companies, pp. 338, 339.

An order for payment of calls is generally called a "balance order." Such an order is not a final judgment on which a bankruptcy notice can be issued (*Ex parte*

Whinney, Re Sanders (1884), 13 Q. B. D. 476; *Ex parte Grimwade, Re Tennent* (1886), 17 Q. B. D. 357); but the debt in respect of the call is not merged by the balance order (*Westmoreland Green and Blue Slate Co.*, v. *Feilden*, [1891] 3 Ch. 15). If therefore the balance order cannot be made productive by execution (see *ibid.*, p. 18), the original debt can be sued for. In such an action the balance order is conclusive evidence that the money is due.

See s. 168, *infra*. On the final judgment in the action a bankruptcy notice may be issued.

Power to order payment into bank.

167.—(1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into the Bank of England or any branch thereof to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into the Bank of England or any branch thereof in the event of a winding up by the court shall be subject in all respects to the orders of the court.

See ss. 103, 104 of the Act of 1862, which are combined in this section with slight alterations.

Compare the provisions of s. 154 (p. 169, *ante*) as to payments into the Companies Liquidation Account by liquidators.

For the mode of enforcing the provisions of this section, see *Re Leeds Banking Co.* (1886), 1 Ch. App. 150.

Order on contributory conclusive evidence.

168.—(1) An order made by the court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings, except proceedings against the real estate of a deceased contributory, in which case the order shall be only primâ facie evidence for the purpose of charging his real estate,

unless his heirs or devisees were on the list of contributories at the time of the order being made.

This section replaces s. 106 of the Act of 1862.

As to a deceased contributory, see s. 126, p. 146, *ante*.

As to using this section in an action for calls, see note to s. 166, p. 178, *ante*.

Power to exclude creditors not proving in time.

169. The court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

See s. 107 of the Act of 1862 which was in identical terms.

Adjustment of rights of contributories.

170. The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

This section repeats s. 109 of the Act of 1862. See Rawlins and Macnaghten on Companies, pp. 341–343.

The fact that persons are contributories does not enable directors who are also contributories to enforce against them under this section rights which have nothing to do with their position as contributories: *Re Alexandra Palace Co.* (1883), 23 Ch. D. 297, 300.

Power to order costs.

171. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges, and expenses incurred in the winding up in such order of priority as the court thinks just.

This section replaces s. 110 of the Act of 1862, as to which see Rawlins and Macnaghten on Companies, p. 343.

When the assets are mortgaged or charged by debentures or otherwise, the security is not prejudiced by this provision. The mortgagee can say that there are assets upon which he has a charge which he wishes to realise, and that he has nothing to do with the distribution of the assets amongst the company's unsecured creditors or the costs incurred in attempting to realise

for their benefit. See *Re David Lloyd & Co.* (1877), 6 Ch. D. 339, 345.

Dissolution of company.

172.—(1) When the affairs of a company have been completely wound up, the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) The order shall be reported by the liquidator to the registrar of companies who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which he is in default.

See ss. 111, 112, 113 of the Act of 1862, the effect of which is here repeated.

Winding up does not, *per se*, dissolve a company.

As to the effect of the order for dissolution, see cases cited in Rawlins and Macnaghten on Companies, p. 344.

As to the effect on a lease to a company when there has been no assignment, see *Hastings Corporation* v. *Letton*, [1908] 1 K. B. 378.

Where a company is dissolved before it has conveyed property to a purchaser in pursuance of a contract under which it has received the purchase money, a vesting order or appointment of a trustee will be made under the Trustee Act, 1893: see *Re General Accident Assurance Co.*, [1904] 1 Ch. 147; *Re No. 12 Cable Road, Hoylake, Cheshire*, [1904] W. N. 8; *Re Richard Mills & Co. (Brierly Hill), Ltd.*, [1905] W. N. 36; *Re No. 9 Bomore Road*, [1906] 1 Ch. 359. *Secus*, *Re Taylor's Agreement Trusts*, [1904] 2 Ch. 737 (the case of a patent).

Delegation to liquidator of certain powers of court in England.

173. General rules may be made for enabling or requiring all or any of the powers and duties conferred and imposed on the court in England by this Act, in respect of the matters following, to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court; that is to say, the powers and duties of the court in respect of—

(*a*) holding and conducting meetings to ascertain the wishes of creditors and contributories;
(*b*) settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets;
(*c*) requiring delivery of property or documents to the liquidator;
(*d*) making calls;
(*e*) fixing a time within which debts and claims must be proved:

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

This section reproduces the effect of s. 13 of the Winding up Act, 1890.

These rules have been prepared and will be issued shortly.

In the mean time the Companies (Winding up) Rules, 1903, apply. See s. 290, p. 274, *post*.

As to the meaning of "documents," see s. 285, p. 270, *post*.

Extraordinary Powers of Court.

Power to summon persons suspected of having property of company.

174.—(1) The court may, after it has made a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the trade, dealings, affairs, or property of the company.

(2) The court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require him to produce any books and papers in his custody or power relating to the company; but, where he claims any lien on books or papers produced by him, the production

shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended, and brought before the court for examination.

This section replaces ss. 115, 117 of the Act of 1862: see Rawlins and Macnaghten on Companies, pp. 344–347.

As to meaning of "books and papers" and "books or papers," see s. 285, p. 270, *post*.

An examination under this section is called a "private examination," and the solicitor of a witness may be put on an undertaking against disclosure as a condition of being present: *Re London & Northern Bank, Haddock's Case*, [1902] 2 Ch. 73.

As to questions put merely for the purpose of a libel action, see *Re London & Northern Bank, Archer's Case* (1902), 50 W. R. 262.

A private examination is a "proceeding" within s. 5 of the Judicature Act, 1890, and persons who have examined others, with a view to taking misfeasance proceedings against them, which fail, may be ordered to pay the costs of the examinees: *Re Appleton, French & Serafton, Ltd.*, [1905] 1 Ch. 749.

Power in England to order public examination of promoters, directors, &c.

175.—(1) When an order has been made in England for winding up a company by the court, and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director, or officer of the company, shall attend before the court on a day appointed by the court for that purpose, and be

publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.

(2) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Board of Trade in that behalf, employ a solicitor with or without counsel.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by solicitor or counsel.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him: Provided that if he is, in the opinion of the court, exculpated from any charges made or suggested against him, the court may allow him such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the court so directs, and subject to general rules, be held before any judge of county courts, or before any officer of the Supreme Court, being an official referee, master, or registrar in bankruptcy, or before any

district registrar of the High Court named for the purpose by the Lord Chancellor, or, in the case of companies being wound up by a palatine court, before a registrar of that court, and the powers of the court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

See s. 8 (3)–(9) of the Winding up Act of 1890, which is reproduced without material alteration, except that the ambiguity previously existing, as to whether the court could make an order after the official receiver's preliminary report only, has been removed in accordance with the construction put upon the section by the House of Lords in *Ex parte Barnes*, [1896] A. C. 146. Compare Rawlins and Macnaghten on Companies, pp. 415, 416.

As to the official receiver's further report, see s. 148 (2), p. 162, *ante;* such a report is "absolutely privileged," and no action will lie for alleged libel contained in it (*Bottomley* v. *Brougham*, [1908] 1 K. B. 884).

The discretionary power under sub-sect. (5) is in no way limited by the other provisions of the section, but the discretion must be judicially and carefully exercised under all the circumstances of each particular case: *Re London and Globe Finance Co.* (1902), 50 W. R. 253.

A public examination, being a proceeding in the winding up, may be transferred from one court to another. See s. 133, p. 154, *ante.*

Power to arrest absconding contributory.

176. The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom, or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and moveable personal property to be seized, and him and them to be safely kept until such time as the court may order.

This section replaces s. 118 of the Act of 1862; see *Re Imperial Mercantile Credit Co.* (1867), L. R. 5 Eq. 264

Powers of court cumulative.

177. Any powers by this Act conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

This section replaces s. 119 of the Act of 1862, as to which see *Westmoreland Green and Blue Slate Co.* v. *Feilden*, [1891] 3 Ch. 15.

Enforcement of and Appeal from Orders.

Power to enforce orders.

178.—(1) Orders made by the High Court in England or Ireland under this Act may be enforced in the same manner as orders made in any action pending therein.

(2) For the purposes of this Part of this Act the court exercising the stannaries jurisdiction shall, in addition to its ordinary powers, have the same power of enforcing any orders made by it as the High Court in England has in relation to matters within its jurisdiction; and, for the last-mentioned purposes, the jurisdiction of the judge of the court exercising the stannaries jurisdiction shall be deemed to be co-extensive in local limits with the jurisdiction of the High Court in England.

This section replaces, with necessary alterations, s. 120 of the Act of 1862; see Rawlins and Macnaghten on Companies, p. 348.

Order for calls on contributories in Scotland.

179. Where an order, interlocutor, or decree has been made in Scotland for winding up a company by the court, it shall be competent to the court, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls, and of the amount due by each contributory, and of the date when the same became due, to pronounce forthwith a decree against those contributories for payment of the sums so certified to be due, with interest from the said date till payment, at the rate of five per cent. per annum

in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of six days, of a legal obligation to pay those calls and interest; and the decree may be extracted immediately, and no suspension thereof shall be competent, except on caution or consignation, unless with special leave of the court.

This section repeats s. 121 of the Act of 1862, with alterations of wording entailed by s. 135, p. 155, *ante*.

Enforcement of orders throughout United Kingdom.

180.—(1) Any order made by the court in England for or in the course of winding up a company shall be enforced in Scotland and Ireland in the courts that would respectively have jurisdiction in respect of that company if registered in Scotland or Ireland, and in the same manner in all respects as if the order had been made by those courts.

(2) In like manner orders, interlocutors, and decrees made by the court in Scotland for or in the course of winding up a company shall be enforced in England and Ireland, and orders made by the court in Ireland for or in the course of winding up a company shall be enforced in England and Scotland, by the courts which would respectively have jurisdiction in respect of that company if registered in that part of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if the order had been made by those courts.

(3) Where any order, interlocutor, or decree made by one court is required to be enforced by another court, an office copy of the order, interlocutor, or decree shall be produced to the proper officer of the court required to enforce the same, and the production of an office copy shall be sufficient evidence of the order, interlocutor, or decree, and thereupon the last-mentioned court shall take the requisite steps in the matter for enforcing the order, interlocutor, or decree, in the same manner as if it had been made by that court.

This section combines the provisions of ss. 122, 123 of the Act of 1862.

Appeals from order.

181.—(1) Subject to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court in cases within its ordinary jurisdiction.

(2) Provided, in regard to orders or judgments pronounced in Scotland by the Lord Ordinary on the Bills in vacation, that—

(i) No order or judgment under the provisions of this Act specified in the First Part of the Fourth Schedule to this Act shall be subject to review, reduction, suspension, or stay of execution; and

(ii) Every other order or judgment (except as herein-after mentioned) shall be subject to review only by reclaiming note, in common form, presented within fourteen days from the date of the order or judgment:

Provided that orders or judgments under the provisions of this Act specified in the Second Part of the Fourth Schedule to this Act shall, from the dates of those orders or judgments, and notwithstanding any reclaiming note against them, be carried out and receive effect until the reclaiming note is disposed of by the court.

(3) Provided also, in regard to orders or judgments pronounced in Scotland by a permanent Lord Ordinary to whom a winding up has been remitted, that any such order or judgment shall be subject to review only by reclaiming note in common form, presented within fourteen days from the date of the order or judgment, but, should a reclaiming note not be presented and moved during session, the provisions of this section in regard to orders or judgments pronounced by the Lord Ordinary on the bills in vacation shall apply to the order or judgment.

(4) Nothing in this section shall affect the provisions of this Act in reference to decrees in Scotland for payment of calls in the winding up of companies,

whether voluntarily or by or subject to the supervision of the court.

Sub-sect. (1) replaces s. 124 of the Act of 1862, except the repealed part relating to the Stannaries. The restriction as to time for notice of appeal is omitted, as being superseded by R. S. C., Order LVIII. r. 9; and the right of appeal is expressed to be "subject to rules of court."

Sub-sects. (2)–(4) reproduce in altered form the provisions of ss. 5 and 6 of the Act of 1886. For Fourth Schedule, see p. 322, *post*.

An appeal from any order or decision of the judge must be brought within fourteen days (to be computed as stated in Order LVII. r. 15); see Order LVIII. r. 9. This rule applies to the winding-up order itself: *Re National Funds Assurance Co.*, [1876] 4 Ch. D. 305.

Voluntary Winding Up.

Circumstances in which company may be wound up voluntarily.

182. A company may be wound up voluntarily—

(1) When the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily:

(2) If the company resolves by special resolution that the company be wound up voluntarily:

(3) If the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

This section is from s. 129 of the Act of 1862: see Rawlins and Macnaghten on Companies, pp. 354, 355.

The articles do not as a rule contain any such provision as is referred to in sub-sect. (1). Where they do, only an ordinary resolution is required unless some other kind of resolution is required by the articles.

As to special resolutions and extraordinary resolutions, see s. 69, p. 84, *ante*.

Commencement of voluntary winding up.

183. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorising the winding up.

This section repeats s. 130 of the Act of 1862. As to commencement of compulsory winding up, see s. 139, p. 157, *ante*.

A voluntary winding up by special resolution commences as soon as the resolution is duly confirmed under s. 69 (2) (p. 84, *ante*); see *Weston's Case* (1868), 4 Ch. App. 20. And the continuation of the voluntary winding up under the supervision of the court does not alter the date of commencement (*ibid.*). But if a compulsory winding-up order is made after a voluntary winding up, whether under supervision or not, has begun, the date of commencement of winding up is the date of the presentation of the petition for a compulsory order: *Re Taurine Co.* (1883), 25 Ch. D. 118.

A resolution for voluntary winding up is not invalid by reason of its being passed contemporaneously with resolutions for a reconstruction scheme which are invalid: *Thomson* v. *Henderson's Transvaal Estates, Ltd.*, [1908] 1 Ch. 765.

Effect of voluntary winding up on status of company.

184. When a company is wound up voluntarily the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

This section is taken from s. 131 of the Act of 1862; see Rawlins and Macnaghten on Companies, pp. 355, 356.

As to the commencement of the winding up, see s. 183.

By s. 186, p. 191, *post*, the powers of the directors cease except so far as continued by the company in general meeting or the liquidator. The directors, therefore, cannot themselves call a meeting of the shareholders, but the liquidator may call a meeting for any purpose (see s. 194 (1), p. 199, *post*), and that meeting may empower the directors to continue the business; see *Ladd's Case*, [1893] 3 Ch. 450. Or, under s. 186 (iv),

and s. 151 (1) (*b*), p. 166, *ante*, the liquidator may himself carry on the business so far as may be necessary for the beneficial winding up thereof.

As to how a company in voluntary liquidation is dissolved, see s. 195, p. 200, *post*.

Notice of resolution to wind up voluntarily.

185. When a company has resolved by special or extraordinary resolution to wind up voluntarily, it shall give notice of the resolution by advertisement in the Gazette.

This replaces s. 132 of the Act of 1862; see definition of "the Gazette" in s. 285, p. 271, *post*.

Consequences of voluntary winding up.

186. The following consequences shall ensue on the voluntary winding up of a company:—

(i) The property of the company shall be applied in satisfaction of its liabilities pari passu, and, subject thereto, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company:

(ii) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(iii) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof:

(iv) The liquidator may, without the sanction of the court, exercise all powers by this Act given to the liquidator in a winding up by the court:

(v) The liquidator may exercise the powers of the court under this Act of settling a list of contributories, and of making calls, and shall pay the debts of the company, and adjust the rights of the contributories among themselves:

(vi) The list of contributories shall be primâ facie evidence of the liability of the persons named therein to be contributories:

(vii) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two:

(viii) If from any cause whatever there is no liquidator acting, the court may, on the application of a contributory, appoint a liquidator:

(ix) The court may, on cause shown, remove a liquidator, and appoint another liquidator.

This section consolidates, in more concise terms, the provisions of ss. 133, 141 of the Act of 1862. For the powers of the court referred to in paragraph (v), see ss. 163, 166, and 170, *ante*.

See Rawlins and Macnaghten on Companies, pp. 357–359, 364.

The liquidator may also, with the sanction of an extraordinary resolution, pay any classes of creditors in full, and make certain compromises and arrangements, see s. 214, p. 216, *post*. A compromise of a claim by the company may apparently be made without any such sanction (*Cycle Makers Co-operative Supply Co.* v. *Sims*, [1903] 1 K. B. 477).

It has been held recently that a voluntary winding up does not operate as a dismissal of the company's servants (*Midland Counties District Bank, Ltd.* v. *Attwood*, [1905] 1 Ch. 357). But the decision is inconsistent with previous decisions, English and Irish, and is probably wrong.

As to the persons who may apply for the removal of a voluntary liquidator, see *Re New De Kaap, Ltd.*, [1908] 1 Ch. 589.

Notice by liquidator of his appointment.

187.—(1) The liquidator in a voluntary winding-up shall, within twenty-one days after his appointment, file with the registrar of companies a notice of his appointment in the form prescribed by the Board of Trade.

(2) If the liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

This section repeats, with formal alterations, s. 26 of the Act of 1907.

Rights of creditors in a voluntary winding-up.

188.—(1) Every liquidator appointed by a company in a voluntary winding-up shall, within seven days from his appointment, send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held on a date, not being less than fourteen nor more than twenty-one days after his appointment, and at a place and hour, to be specified in the notice, and shall also advertise notice of the meeting once in the Gazette and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company was situate.

(2) At the meeting to be held in pursuance of the foregoing provisions of this section the creditors shall determine whether an application shall be made to the court for the appointment of any person as liquidator in the place of or jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection, and, if the creditors so resolve, an application may be made accordingly to the court at any time, not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting.

(3) On any such application the court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection either together with or without any such appointment of a liquidator or such other order as, having regard to the interests of the creditors and contributories of the company, may seem just.

(4) No appeal shall lie from any order of the court upon an application under this section.

(5) The court shall make such order as to the costs of the application as it may think fit, and if it is of opinion that, having regard to the interests of the creditors in the liquidation, there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company, notwithstanding that the application is dismissed or otherwise disposed of adversely to the applicant.

Section 27 of the Act of 1907 contained similar provisions; see definition of "the Gazette" in s. 285, p. 271, *post*.

Compare s. 152 (1), (2) (p. 168, *ante*) for the corresponding provisions in the case of a winding up by the court.

The section is likely to cause great and unnecessary inconvenience when companies are wound up voluntarily for the mere purpose of reconstruction.

Power to fill vacancy in office of liquidator.

189.—(1) If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company in a voluntary winding up, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner prescribed by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

This section replaces s. 140 of the Act of 1862. As to filling vacancies where liquidators are appointed by the court, see s. 149 (7), p. 164, *ante*.

As to an arrangement by the company with its creditors, see ss. 190, 191. The words of s. 140 of 1862 were "subject to any arrangement they *may have entered into* with their creditors."

Delegation of authority to

190.—(1) A company about to be, or in course of being, wound up voluntarily may, by extraordinary

resolution, delegate to its creditors, or to any committee of them, the power of appointing liquidators or any of them, and of supplying vacancies among the liquidators, or enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised. appoint liquidators.

(2) Any act done by creditors in pursuance of any such delegated power shall have the same effect as if it had been done by the company.

Section 135 of the Act of 1862 was in similar terms.

No instance of this power having been exercised is known to the authors.

191.—(1) Any arrangement entered into between a company about to be, or in the course of being, wound up voluntarily and its creditors shall, subject to any right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three fourths in number and value of the creditors. Arrangement when binding on creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

This section combines the provisions of ss. 136, 137 of the Act of 1862.

As to "extraordinary resolution," see s. 69, p. 84, *ante*.

As to "the court," see s. 285, p. 270, *post*.

192.—(1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company (in this section called the transferee company,) the liquidator of the first-mentioned company (in this section called the transferor company) may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any Power of liquidator to accept shares, &c., as consideration for sale of property of company.

particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution at either of the meetings held for passing and confirming the same expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the confirmation of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

(4) If the liquidator elects to purchase the member's interest the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for winding up the company, or for appointing liquidators; but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.

(6) For the purposes of an arbitration under this section the provisions of the Companies Clauses Consolidation Act, 1845, or, in the case of a winding-up in Scotland, the Companies Clauses Consolidation (Scotland) Act, 1845, with respect to the settlement

of disputes by arbitration, shall be incorporated with this Act; and in the construction of those provisions this Act shall be deemed to be the special Act, and "the company" shall mean the transferor company, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, or, if there is more than one liquidator, then of any two or more of the liquidators.

This section repeats, with but slight verbal changes, the provisions of ss. 161, 162 of the Act of 1862; see Rawlins and Macnaghten on Companies, pp. 389–392.

Compare the general provisions as to arbitration contained in s. 119, p. 138, *ante*.

It has been usual for many years for companies to state, in their memoranda of association, that one of the objects is to sell the undertaking or any part thereof for any consideration, and in particular for shares or other securities of any other company having similar objects. Such a power was held to be valid, even when the whole of the company's assets were sold, but the winding up, which is required before the proceeds of the sale can be distributed amongst the shareholders, was not resolved upon at the same time (*Cotton* v. *Imperial and Foreign Agency and Investment Corporation*, [1892] 3 Ch. 454). One effect of that decision was that dissentients under the provision for which sub-sect. (3) is substituted, were deprived of any rights which they would have possessed on a statutory reconstruction to have their interests paid for. The fact that a resolution for voluntary winding up was passed at the time when the sale was sanctioned was held to be immaterial in *Doughty* v. *Lomagunda Reefs, Ltd.*, [1902] 2 Ch. 837. It was further held that unless there was something in the memorandum or articles to qualify the meaning of the word "shares" a company could, under its memorandum power of sale, accept partly paid shares in another company (*Mason* v. *Motor Traction Co.*, [1905] 1 Ch. 419). Where the memorandum expressly gave power to sell for fully or partly paid shares, the Court of Appeal, without deciding that such a power was illegal, held that an agreement with another company which provided for the distribution of the partly paid shares of the purchasing

company among the shareholders of the selling company, and that the proceeds of sale of the shares not taken up should be applied in reduction of the purchase money, was not within the power (*Manners* v. *St. David's Gold and Copper Mines, Ltd.*, [1904] 2 Ch. 593). And an agreement, under which the proceeds of the partly paid shares unclaimed were to be distributed rateably amongst the members who might have claimed them, was also held to be *ultra vires* (*Bisgood* v. *Nile Valley Co.*, [1906] 1 Ch. 747). In a somewhat similar case the agreement was held to be valid: *Fuller* v. *White Feather Reward, Ltd.*, [1906] 1 Ch. 823. But the Court of Appeal has subsequently approved *Bisgood* v. *Nile Valley Co.*, overruled *Cotton* v. *Imperial and Foreign Agency and Investment Corporation* and *Fuller* v. *White Feather Reward, Ltd.*, and decided that the sale of all a company's assets and all its undertaking and the distribution of the proceeds cannot be a corporate object so that under a clause for that purpose introduced into the memorandum of association such a sale and distribution can be made without regard to the provisions of the section which s. 192 replaces, and that a company limited by shares cannot by its memorandum and articles provide, as part of its constitution, that in an event the corporator shall either submit to a liability in excess of the limit of liability on his shares or be dispossessed of his status as corporator: *Bisgood* v. *Henderson's Transvaal Estates, Ltd.*, [1908] 1 Ch. 743. Hundreds of companies have been reconstructed under similar powers under memoranda of association, and it is doubtful whether a decision following the case last cited would be affirmed on an appeal to the House of Lords.

As to sub-sect. (5), see *Re Callao Bis Co.* (1889), 42 Ch. D. 169.

Power to apply to court.

193.—(1) Where a company is being wound up voluntarily the liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will

be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the court thinks fit, or may make such other order on the application as the court thinks just.

This section replaces s. 138 of the Act of 1862, as amended by s. 25 of the Act of 1900; see Rawlins and Macnaghten on Companies, pp. 361, 362. Before 1901 a creditor could not apply to the court in a voluntary winding up.

All applications to the court in a voluntary winding up are made under this section (*Re New De Kaap, Ltd.*, [1908] 1 Ch. 589).

Although a voluntary winding up which is not under supervision does not of itself prevent an action or proceeding against the company from being commenced or continued, the court has power under this section and ss. 140, 142, pp. 158, 159, *ante*, to restrain actions which are not in the High Court, and actions in that court may be stayed: *Re Poole Firebrick and Blue Clay Co.* (1873), L. R. 17 Eq. 268; Yearly Practice, 1909, p. 1232. But the onus lies on the voluntary liquidator to show that an action should be stayed, and *primâ facie* the ordinary tribunal is the proper one to decide a claim against the company (*Currie* v. *Consolidated Kent Collieries Corporation*, [1906] 1 K. B. 134).

Power of liquidator to call general meeting.

194.—(1) Where a company is being wound up voluntarily, the liquidator may summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution, or for any other purposes he may think fit.

(2) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

This section replaces s. 139 of the Act of 1862. For other requirements where the winding up is not concluded within a year, see s. 224, p. 222, *post*.

As to special and extraordinary resolutions, see s. 69, p. 84, *ante*.

Final meeting and dissolution.

195.—(1) In the case of every voluntary winding up, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in the Gazette, specifying the time, place, and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting, the liquidator shall make a return to the registrar of companies of the holding of the meeting, and of its date, and in default of so doing shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(4) The registrar on receiving the return shall forthwith register it, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to file with the registrar an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

This section consolidates ss. 142 and 143 of the Act of 1862, as amended by ss. 31 (1), (3), 50, and Schedule III. of the Act of 1907. See Rawlins and Macnaghten on Companies, p. 365.

Section 186, p. 191, *ante*, imposes a duty on the liquidator to pay the debts of the company *pari passu*, and subject thereto to distribute the assets amongst the shareholders, and when the company is dissolved the right of a creditor or shareholder to relief by application under s. 193 (p. 198, *ante*) is gone, but he has a remedy at common law against the liquidator for injury caused by a breach of the liquidator's statutory duty; see *Pulsford* v. *Devenish*, [1903] 2 Ch. 625. If the liquidator distributes the assets without providing for income tax he may be proceeded against for misfeasance (*Re New Zealand Joint-Stock and General Corporation* (1907), 23 T. L. R. 238).

Prior to the Act of 1907 the court had no jurisdiction directly to extend the period of three months after which dissolution took place, but before dissolution took place it could stay all proceedings in the voluntary winding up, and thus keep the company on foot after the three months had expired; see *Re Eastern Investment Co.*, [1905] 1 Ch. 352. As to the court's power to declare a dissolution void, see s. 223, p. 221, *post*.

Costs of voluntary liquidation.

196. All costs, charges, and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

Section 144 of the Act of 1862 was in similar terms; see Rawlins and Macnaghten on Companies, pp. 365, 366.

As to the remuneration of a liquidator appointed by a resolution for voluntary winding up which has subsequently been held invalid, see *Re Allison, Johnson, and Foster, Ltd.*, [1904] 2 K. B. 327.

Saving for rights of creditors and contributories.

197. The voluntary winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, if the court is of opinion, in the case of an application by a creditor, that the rights of the creditor or, in the case of an application by a contributory, that the rights of the contributories will be prejudiced by a voluntary winding up.

Section 145 of the Act of 1862 contained similar provisions in favour of creditors; the extension to contributories is new. See, however, cases cited in Rawlins and Macnaghten on Companies, pp. 366, 367.

The *primâ facie* right of a creditor to a winding-up order is restricted by the section, but the voluntary winding up is no bar to his right if he is supported by the general body of creditors: *Re E. Bishop & Sons, Ltd.*, [1900] 2 Ch. 254; *Re Hermann Lichtenstein & Co.* (1907), 23 T. L. R. 424.

As to contempt of court in issuing circulars in order to obstruct a winding-up petition, see *Re Septimus Parsonage & Co.*, [1901] 2 Ch. 424.

As to the *primâ facie* right of a fully paid shareholder, where there is a probable surplus, to a winding-up order, although the company is in voluntary winding up, see *Re National Distribution of Electricity Co.*, [1902] 2 Ch. 34.

It is to be noted that, in the case of an application by a creditor, the court is to have regard to possible prejudice to his rights; but where the applicant is a contributory the rights of other contributories are also to be considered.

A creditor, as between himself and the company, has a right *ex debito justitiae* to a winding-up order; see *Barnes* v. *Hope Life Insurance Co.* (1865), 11 H. L. Cas., at p. 401.

Power of court to adopt proceedings of voluntary winding up.

198. Where a company is being wound up voluntarily, and an order is made for winding up by the court, the court may if it thinks fit by the same or any subsequent order provide for the adoption of all or any of the proceedings in the voluntary winding up.

This section replaces s. 146 of the Act of 1862, as to which see Rawlins and Macnaghten on Companies, p. 367.

The section only refers to proceedings subsequent to the commencement of the voluntary winding up; see *Re Taurine Co.* (1883), 25 Ch. D. 118, 139.

Winding Up subject to Supervision of Court.

Power to order winding up subject to supervision.

199. When a company has by special or extraordinary resolution resolved to wind up voluntarily, the court may make an order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories, or others to apply to the court, and generally on such terms and conditions as the court thinks just.

This section replaces s. 147 of the Act of 1862; see Rawlins and Macnaghten on Companies, pp. 368, 369.

As to when a winding up under this section "commences," see note to s. 183, p. 190, *ante*.

As to special and extraordinary resolutions, see s. 69, p. 84, *ante*.

It was an everyday practice to make supervision orders when the creditors had not the right, which they now possess (see s. 193, p. 198, *ante*), to apply to the court in the voluntary winding up. Such orders are now rarely made, but sometimes they are taken by consent as a compromise between the continuance of a voluntary winding up and an order for a winding up by the court. If a creditor petitioning for a compulsory order asks only for a supervision order the court cannot force him to take a compulsory order (*Re Chepstow Bobbin Mills Co.* (1887), 36 Ch. D. 563).

Small advantage is now gained by obtaining a supervision order. The form of order now in use directs the liquidator to file reports every three months on the position and progress of the winding up, etc., and orders that no bills of costs, charges, or expenses, or special remuneration of any solicitor appointed by the liquidator, or any remuneration, charges, or expenses of the liquidator, or of any manager, accountant, auctioneer, broker, or other person is to be paid out of the assets without taxation. And the order, like a compulsory order, stops or prevents the bringing of proceedings against the company without leave of the court, see s. 203 (2), p. 205, *post*. Moreover, a special resolution for reconstruction under s. 192, p. 195, *ante*, is not valid if a supervision order is made within a year thereafter unless it is sanctioned by the court, and the

making of the order does not alter the date of the commencement of the winding up. See further, as to the effect of a supervision order, ss. 200, 203, *infra*.

Effect of petition for winding up subject to supervision.

200. A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court.

See s. 148 of the Act of 1862. Section 140 (p. 158, *ante*) gives power for the court to stay proceedings against a company after the presentation of a petition to wind up; and compare s. 211, p. 213, *post*.

Court may have regard to wishes of creditors and contributories.

201. The court may, in deciding between a winding up by the court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

This section is taken from the first provision in s. 149 of the Act of 1862; see Rawlins and Macnaghten on Companies, pp. 369, 370.

Compare the provisions in s. 145, p. 160, *ante*, and the general regulations on the subject contained in s. 219, p. 219, *post*.

Power for court to appoint or remove liquidators.

202.—(1) Where an order is made for a winding up subject to supervision, the court may by the same or any subsequent order appoint any additional liquidator.

(2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company.

(3) The court may remove any liquidator so appointed by the court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

Section 150 of the Act of 1862 contained similar provisions; but the express power to remove a liquidator continued under the supervision order is new, though perhaps included in the power to remove a liquidator in a voluntary winding up (s. 186 (ix), p. 192, *ante*).

Effect of supervision order.

203.—(1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily.

(2) A winding-up subject to the supervision of the court is not a winding-up by the court for the purpose of the following provisions of this Act, namely, those contained in sections one hundred and forty-seven, one hundred and forty-eight, one hundred and forty-nine, except subsection (10), one hundred and fifty-two, one hundred and fifty-three, one hundred and fifty-four, one hundred and fifty-five, one hundred and fifty-six, one hundred and fifty-seven, one hundred and fifty-eight, one hundred and fifty-nine, one hundred and sixty, one hundred and sixty-one, one hundred and sixty-two, one hundred and seventy-three, and one hundred and seventy-five, but, subject as aforesaid, an order for a winding up subject to supervision shall for all purposes, including the staying of actions and other proceedings, the making and enforcement of calls, the power in Scotland to remit the winding up to a permanent Lord Ordinary, and the exercise of all other powers, be deemed to be an order for winding up by the court.

Compare the similar provisions of s. 151 of the Act of 1862. As to the powers of a liquidator in voluntary winding up, see s. 186, p. 191, *ante*. The court's power to impose restrictions is conferred by the final words of s. 199 (p. 203, *ante*).

The enumeration of purposes for which a winding up under supervision is *not* a winding up by the court was not included in the repealed section. The provisions referred to are those relating to the statement to be furnished to the official receiver (s. 147), the official

receiver's reports (s. 148), the appointment and remuneration of liquidators (s. 149), the summoning by the official receiver of meetings of creditors (s. 152), the information to be given by the liquidator to the official receiver (s. 153), payments into the Companies Liquidation Account (s. 154), audit of liquidator's accounts (s. 155), books to be kept by liquidators (s. 156), release of liquidators (s. 157), exercise of liquidators' powers (s. 158), control of liquidator by Board of Trade (s. 159), committee of inspection (s. 160), special managers (s. 161), appointment of official receiver as receiver for debenture holders or creditors (s. 162), delegation of court's powers to liquidator (s. 173), and public examination of directors, etc.

The power to remit a winding up in Scotland to a permanent Lord Ordinary is now contained in s. 136 (p. 155, *ante*).

Appointment of voluntary liquidator as liquidator in winding up by court in Scotland or Ireland.

204. Where an order has been made in Scotland or Ireland for winding up a company subject to supervision, and an order is afterwards made for winding up by the court, the court may by the last-mentioned or by any subsequent order appoint any person who is then liquidator, either provisionally or permanently, and either with or without any other person, to be liquidator in the winding up by the court.

Similar provisions were contained in s. 152 of the Act of 1862, which applied to the whole of the United Kingdom; as regards England the matter is now regulated by s. 149 (2), (3) (p. 163, *ante*).

Supplemental Provisions.

Avoidance of transfers, &c., after commencement of winding up.

205.—(1) In the case of voluntary winding up, every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding up, shall be void.

(2) In the case of a winding up by or subject to the supervision of the court, every disposition of the

property (including things in action) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

Sub-sect. (1) is taken from s. 131 of the Act of 1862; sub-sect. (2) replaces s. 153 of the same Act. See Rawlins and Macnaghten on Companies, pp. 356, 372–374, for decisions on the earlier enactments.

See *National Bank of Wales, Ltd., Massey and Giffin's Case*, [1907] 1 Ch. 582.

Debts of all descriptions to be proved.

206. In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Section 158 of the Act of 1862 was in similar terms, omitting the parenthesis, as to which see next following section.

For cases under s. 158, see Rawlins and Macnaghten on Companies, pp. 375–383.

Application of bankruptcy rules in winding up of insolvent English and Irish companies.

207. In the winding up of an insolvent company registered in England or Ireland the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy in England or Ireland, as the case may be, with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under

the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

This section consolidates the provisions contained in the Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 10, and the Judicature Act (Ireland), 1877 (40 & 41 Vict. c. 57), s. 28 (1), as to insolvent companies in England and Ireland respectively.

There is no definition of an "insolvent" company, but it would seem that a company "unable to pay its debts" within the meaning of s. 130 (p. 149, *ante*), is an insolvent company. See Rawlins and Macnaghten on Companies, pp. 375 *et seq.*

On applications under s. 278, p. 266, *post*, the fact that a company is in liquidation is *primâ facie* evidence that it is insolvent: see *City of Moscow Gas Co.* v. *International Financial Society* (1872), 7 Ch. App. 225, 227, 229; *Northampton Coal, Iron, and Waggon Co.* v. *Midland Waggon Co.* (1878), 7 Ch. D. 500, 503.

As to debts provable in bankruptcy, see Halsbury, Laws of England, Vol. II. pp. 197 *et seq.* As to the rights of secured and unsecured creditors, see *ibid.*, pp. 224 *et seq.* As to contingent debts, see *ibid.*, pp. 198, 199.

Ranking of claims in Scotland.

208. In the winding up of a company registered in Scotland, the general and special rules in regard to voting and ranking for payment of dividends provided by sections forty-nine to sixty-six of the Bankruptcy (Scotland) Act, 1856, or any other rules in regard thereto which may be in force for the time being in the sequestration of the estates of bankrupts in Scotland, shall, so far as is consistent with this Act, apply to creditors of the company voting in matters relating to the winding up, and ranking for payment of dividends; and for this purpose sequestration shall be taken to mean winding up, trustee to mean liquidator, and sheriff to mean the court.

Section 4 of the Act of 1886 contained a provision in similar terms. The Bankruptcy (Scotland) Act, 1856, is 19 & 20 Vict. c. 79.

209.—(1) In a winding up there shall be paid in priority to all other debts— Preferential payments.

(*a*) All parochial or other local rates due from the company at the date hereinafter mentioned, and having become due and payable within twelve months next before that date, and all assessed taxes, land tax, property or income tax assessed on the company up to the fifth day of April next before that date, and not exceeding in the whole one year's assessment;

(*b*) All wages or salary of any clerk or servant in respect of services rendered to the company during four months before the said date, not exceeding fifty pounds; and

(*c*) All wages of any workman or labourer not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the company during two months before the said date: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the said date; and

(*d*) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts (not exceeding in any individual case one hundred pounds) due in respect of compensation under the Workmen's Compensation Act, 1906, the liability wherefor accrued before the said date, subject nevertheless to the provisions of section five of that Act.

(2) The foregoing debts shall—

(*a*) Rank equally among themselves and be paid in full, unless the assets are insufficient to

meet them, in which case they shall abate in equal proportions; and

(*b*) In the case of a company registered in England or Ireland, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(5) The date herein-before in this section referred to is—

(*a*) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and

(*b*) in any other case, the date of the commencement of the winding up.

This section is founded on the Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62), s. 1, and the Preferential Payments in Bankruptcy (Ireland) Act, 1889 (52 & 53 Vict. c. 60), s. 4—which are in similar terms—as amended by the Preferential Payments in Bankruptcy Amendment Act, 1897 (60 & 61 Vict. c. 19), s. 2, the Workmen's Compensation Act, 1906

(6 Edw. 7. c. 58), s. 5 (3), (6), and the Act of 1907, s. 30.

"Debentures" in sub-sect. (2) (*b*) includes debenture stock; see s. 285, p. 270, *post.*

It should be noted that sub-sect. (4) does not extend to a voluntary winding up

A secretary to a company may be a "clerk or servant" within sub-sect. (1) (*b*), but a secretary who does not give his whole time to the service of the company and discharges the general duties of his office by a clerk appointed and paid by himself is not a "clerk or servant" within the section: *Cairney* v. *Back*, [1906] 2 K. B. 746. And a secretary of a company who is also managing clerk to a firm of solicitors is not a clerk within sub-sect. (1) (*b*): *Re Callender's Paper Manufacturing Co.* (unreported), *per* SWINFEN EADY, J., in chambers, June 30, 1908. See also Halsbury, Laws of England, Vol. II. pp. 217, 218.

Section 5 of the Workmen's Compensation Act, 1906, is as follows:—

5.—(1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the enactments relating to bankruptcy and the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the bankruptcy or liquidation.

(3) There shall be included among the debts which under section one of the Preferential Payments in Bankruptcy Act, 1888, and section four of the Preferential Payments in Bankruptcy (Ireland) Act, 1889, are in the distribution of the property of a bankrupt and in the

distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount, not exceeding in any individual case one hundred pounds, due in respect of any compensation the liability wherefor accrued before the date of the receiving order or the date of the commencement of the winding up, and those acts and the Preferential Payments in Bankruptcy Amendment Act, 1897, shall have effect accordingly. Where the compensation is a weekly payment, the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the weekly payments could, if redeemable, be redeemed if the employer made an application for that purpose under the first schedule to this Act.

(4) In the case of the winding up of a company within the meaning of the Stannaries Act, 1887, such an amount as aforesaid, if the compensation is payable to a miner or the dependants of a miner, shall have the like priority as is conferred on wages of miners by section nine of that Act, and that section shall have effect accordingly.

(5) The provisions of this section with respect to preferences and priorities shall not apply where the bankrupt or the company being wound up has entered into such a contract with insurers as aforesaid.

(6) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

Compare s. 107, and notes thereto, pp. 127–129, *ante*.

Fraudulent preference.

210.—(1) Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) For the purposes of this section the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the court, and a resolution for winding up in the case of

a voluntary winding up, shall be deemed to correspond with the act of bankruptcy in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

This section re-enacts the provisions of s. 164 of the Act of 1862; see Rawlins and Macnaghten on Companies, pp. 393, 394. As to fraudulent preference in bankruptcy, see Halsbury, Laws of England, Vol. II. pp. 279–287.

As to debentures given to secure a liability kept secret until the eve of winding up, see *Re Jackson and Bassford, Ltd.*, [1906] 2 Ch. 467.

The Deeds of Arrangement Act, 1887 (50 & 51 Vict. c. 57), does not apply to companies registered under the Consolidation Act or the Acts which it replaces. Deeds of arrangement by such companies are dealt with by sub-sect. (3) of s. 210; see *Re Rileys, Ltd.*, [1903] 2 Ch. 590.

Avoidance of certain attachments, executions, &c., in case of company registered in England or Ireland.

211. Where any company (being a company registered in England or Ireland) is being wound up by or subject to the supervision of the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding-up shall be void to all intents.

This section repeats the enactment contained in s. 163 of the Act of 1862 with the addition of the limitation to England and Ireland. For the provisions applying in Scotland, see s. 213 (1), p. 214, *post.*

For decisions on the interpretation of the words "void to all intents," see Rawlins and Macnaghten on Companies, p. 393; and compare s. 142, p. 159, *ante.*

As to applications to stay proceedings in a voluntary winding up which is not under supervision, see notes to s. 193, p. 199, *ante.*

Effect of floating charge.

212. Where a company is being wound up, a floating charge on the undertaking or property of the company created within three months of the commencement of the winding up shall, unless it is

proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

Section 13 of the Act of 1907 was in identical terms.

As to the meaning of "floating charge," see notes to s. 93, p. 118, *ante*.

Effect in case of company registered in Scotland of diligence within sixty days of winding up by or subject to supervision of court.

213. In the winding up, by or subject to the supervision of the court, of a company registered in Scotland, the following provisions shall have effect:—

(1) The winding up shall, in the case of a winding up by the court as at its commencement, and in the case of a winding up subject to supervision as at the date of the presentation of the petition on which the supervision order is pronounced, be equivalent to an arrestment in execution and decree of forthcoming, and to an executed or completed poinding; and no arrestment or poinding of the funds or effects of the company, executed on or after the sixtieth day prior to the commencement of the winding up by the court, or to the presentation of the petition on which a supervision order is made, as the case may be, shall be effectual; and those funds or effects, or the proceeds of those effects, if sold, shall be made forthcoming to the liquidator: Provided that any arrester or poinder before the date of the winding up, or of the petition, as the case may be, who is thus deprived of the benefit of his diligence, shall have preference out of those funds or effects for the expense bonâ fide incurred by him in such diligence:

(2) The winding up shall, as at the respective dates aforesaid, be equivalent to a decree of adjudication of the heritable estates of the

company for payment of the whole debts of the company, principal and interest, accumulated at the said dates respectively, subject to such preferable heritable rights and securities as existed at the said dates and are valid and unchallengeable, and the right to poind the ground herein-after provided:

(3) The provisions of sections one hundred and twelve to one hundred and seventeen, and of section one hundred and twenty, of the Bankruptcy (Scotland) Act, 1856, shall, so far as is consistent with this Act, apply to the realisation of heritable estates affected by such heritable rights and securities as aforesaid; and for the purposes of this Act the words "sequestration" and "trustee" occurring in those sections shall mean respectively "winding up" and "liquidator"; and the expression "the Lord Ordinary or the court" shall mean "the court" as defined by this Act with respect to Scotland:

(4) No poinding of the ground which has not been carried into execution by sale of the effects sixty days before the respective dates aforesaid shall, except to the extent herein-after provided, be available in any question with the liquidator: Provided that no creditor who holds a security over the heritable estate preferable to the right of the liquidator shall be prevented from executing a poinding of the ground after the respective dates aforesaid, but that poinding shall in competition with the liquidator be available only for the interest on the debt for the current half-yearly term, and for the arrears of interest for one year immediately before the commencement of that term.

This section repeats, without material alteration, the provisions of s. 3 of the Act of 1886.

Sections 112–117 of the Bankruptcy (Scotland) Act, 1856 (19 & 20 Vict. c. 79), relate to the sale of heritable estate by a creditor holding security, with power of sale, preferable to the right of the trustee; sale by the trustee with the concurrence of such creditor; resolution by creditors that the trustee shall sell; sale by the trustee by private bargain; the ascertainment of claims and their priorities and payment out of the price realised. Section 120 enables creditors, but not the trustee, to purchase at a public sale.

"'The court' as defined by this Act with respect to Scotland" is explained in s. 135, p. 155, *ante*.

General scheme of liquidation may be sanctioned.

214.—(1) The liquidator may, with the sanction following (that is to say)—

(*a*) in the case of a winding up by the court in England with the sanction either of the court or of the committee of inspection;

(*b*) in the case of a winding up by the court in Scotland or Ireland, and in the case of any winding up subject to supervision, with the sanction of the court; and

(*c*) in the case of a voluntary winding up, with the sanction of an extraordinary resolution of the company,

do the following things or any of them:—

(i) Pay any classes of creditors in full;

(ii) Make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable:

(iii) Compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way

relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) In the case of a winding up by the court in England the exercise by the liquidator of the powers of this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

This section replaces ss. 159, 160 of the Act of 1862, as amended, so far as English companies are concerned, by s. 12 (1), (3) of the Winding up Act of 1890.

Compare s. 191, p. 195, *ante*.

As to compromises, see *Cycle Makers' Co-operative Supply Co.* v. *Sims*, [1903] 1 K. B. 477.

Power of court to assess damages against delinquent directors, &c.

215.—(1) Where in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance, or breach of trust as the court thinks just.

(2) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

(3) Where in the case of a winding up in England

an order for payment of money is made under this section, the order shall be deemed to be a final judgment within the meaning of paragraph (*g*) of subsection (1) of section four of the Bankruptcy Act, 1883.

(4) So much of this section as refers to promoters, and to property of a company other than money, shall not apply to a winding up in Scotland or Ireland.

This section replaces s. 10 of the Winding up Act of 1890—which itself replaced s. 165 of the Act of 1862—as amended by s. 1 of the Companies (Winding up) Act, 1893 (56 & 57 Vict. c. 58). The Act of 1890 only applies to England, and sub-sect. (4), above, accordingly, limits the effect of the section to that of s. 165 of the 1862 Act in cases where the 1890 Act did not apply.

See Rawlins and Macnaghten on Companies, pp. 395–401.

The effect of sub-sect. (3) is to make the order for payment a final judgment in respect of which a bankruptcy notice can be served; see Halsbury, Laws of England, Vol. II. pp. 25–32.

As to making directors pay the costs of a misfeasance summons which fails to establish monetary liability, but shows breaches of duty, see *Re David Ireland & Co.*, [1905] 1 Ir. R. 133.

A liquidator will not be ordered to give security for the costs of a misfeasance summons on the ground of poverty: *Re Strand Wood Co.*, [1904] 2 Ch. 1.

Penalty for falsification of books.

216. If any director, officer, or contributory of any company being wound up destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of a misdemeanor, and be liable to imprisonment for any term not exceeding two years, with or without hard labour.

Section 166 of the Act of 1862 contained a similar provision.

As to prosecutions for offences under the Act, see ss. 276, 277, pp. 265, 266, *post.*

As to the winding-up court directing prosecutions, see s. 217, *post.*

Prosecution of delinquent directors, &c.

217.—(1) If it appears to the court in the course of a winding up by or subject to the supervision of the court that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the court may on the application of any person interested in the winding up, or of its own motion, direct the liquidator to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator, with the previous sanction of the court, may prosecute the offender, and all expenses properly incurred by him in the prosecution shall be payable out of the assets of the company in priority to all other liabilities.

This section replaces ss. 167, 168 of the Act of 1862.

As to the considerations influencing the court in considering whether a director should be prosecuted, see *Re London and Globe Finance Corporation*, [1903] 1 Ch. 728.

Penalty on perjury.

218. If any person, on examination on oath authorised under this Act, or in any affidavit or deposition in or about the winding up of any company or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall be liable to the penalties for wilful perjury.

Section 169 of the Act of 1862 was in similar terms. See notes to s. 216, *supra.*

Meetings to ascertain wishes of

219.—(1) Where by this Act the court is authorised, in relation to winding up, to have regard to

creditors or contributories.

the wishes of creditors or contributories, as proved to it by any sufficient evidence, the court may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by the articles.

This section consolidates the similar provisions contained in ss. 91, 149 of the Act of 1862.

As to cases in which this section applies, see ss. 145, 201 (pp. 160, 204, *ante*).

Books of company to be evidence.

220. Where any company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be primâ facie evidence of the truth of all matters purporting to be therein recorded.

This section replaces s. 154 of the Act of 1862; see Rawlins and Macnaghten on Companies, p. 374.

"Books and papers" include accounts, deeds, writings, and documents; see s. 285, p. 270, *post*.

Inspection of books.

221. After an order for a winding up by or subject to the supervision of the court, the court may make such order for inspection by creditors and contributories of the company of its books and papers as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

This section repeats s. 156 of the Act of 1862; see Rawlins and Macnaghten on Companies, p. 375.

The right to inspect the register of members given by s. 30, p. 53, *ante*—and probably the right to inspect other books of the company—ceases on winding up; see *Re Kent Coalfields Syndicate*, [1898] 1 Q. B. 754.

As to the meaning of "books and papers," see s. 285, p. 270, *post.*

Disposal of books and papers of company.

222.—(1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows (that is to say):—

(*a*) In the case of a winding up by or subject to the supervision of the court in such way as the court directs;

(*b*) In the case of a voluntary winding up in such way as the company by extraordinary resolution directs.

(2) After five years from the dissolution of the company no responsibility shall rest on the company, or the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

This section re-enacts the provisions of s. 155 of the Act of 1862.

The Rules of 1903 (r. 158 (2)) also empowered the Board of Trade to direct books and papers of the company or the liquidator, which were no longer required for the purpose of the liquidation, to be sold, destroyed, or otherwise disposed of.

In the case of banking companies it is submitted that the books should not be hastily destroyed, as they are evidence, under the Bankers' Books Evidence Act, 1879 (42 & 43 Vict. c. 11), even when in the custody or control of successors to the bank (*Asylum for Idiots* v. *Handysides* (1906), 22 T. L. R. 573).

Power of court to declare dissolution of company void.

223.—(1) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, to file with the registrar of companies an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

This enactment is taken from s. 31 (2), (3) of the Act of 1907.

As to dissolution, see ss. 172, 195, and notes thereon (pp. 181, 201, *ante*).

Information as to pending liquidations in England.

224.—(1) Where a company is being wound up in England, if the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom; but any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the liquidator or of the official receiver.

(3) If a liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues.

(4) If it appears from any such statement or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the same to the Companies Liquidation

Account at the Bank of England, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(5) For the purpose of ascertaining and getting in any money payable to the Bank of England in pursuance of this section, the like powers may be exercised, and by the like authority, as are exercise-able under section one hundred and sixty-two of the Bankruptcy Act, 1883, for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in that section.

(6) Any person claiming to be entitled to any money paid into the Bank of England in pursuance of this section may apply to the Board of Trade for payment of the same, and the Board may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

(7) Any person dissatisfied with the decision of the Board of Trade in respect of any claim made in pursuance of this section may appeal to the High Court.

See s. 15 (1)–(5) of the Winding up Act of 1890, which is reproduced without material alteration.

Section 162 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), relates to unclaimed funds and dividends in the hands of trustees under that Act, or of persons who have acted under certain repealed statutes; see Halsbury, Laws of England, Vol. II. pp. 239–241.

The section applies not only in the case of a winding up by the court, but also in the case of a voluntary winding up, whether under supervision or not; see *Re Stock and Share Auction and Banking Co.*, [1894] 1 Ch. 736.

As to what are "undistributed assets," see *Re Land Mortgage Bank of Florida*, [1898] 1 Ch. 444.

As to the Companies Liquidation Account, see s. 229, p. 226, *post.*

Most elaborate rules and forms were issued to carry out s. 15 of the Winding up Act, 1890; and the new rules and forms will probably be framed on the same basis.

Judicial notice of signature of officers.

225. In all proceedings under this Part of this Act, all courts, judges, and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of the High Court in England or Ireland, or of the Court of Session in Scotland, or of the registrar of the court exercising the stannaries jurisdiction, and also of the official seal or stamp of the several offices of the High Court in England or Ireland, Court of Session, or court exercising the stannaries jurisdiction, appended to or impressed on any document made, issued, or signed under the provisions of this Part of this Act, or any official copy thereof.

Section 125 of the Act of 1862 was to the same effect.

Special commission for receiving evidence.

226.—(1) The judges of the county courts in England who sit at places more than twenty miles from the General Post Office, and the judge exercising the bankruptcy jurisdiction of the High Court in Ireland and the assistant barristers and recorders in Ireland, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this Act, where a company is wound up in any part of the United Kingdom, and the court may refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner, although he is out of the jurisdiction of the court that made the winding-up order.

(2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a judge of a county court, judge of the High Court, assistant barrister or recorder, or sheriff, have in the matter so referred to him all the same powers of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order.

(3) The examination so taken shall be returned or reported to the court which made the order in such manner as that court directs.

This section replaces s. 126 of the Act of 1862 with merely necessary alterations.

Court may order examination of persons in Scotland.

227.—(1) The court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, in regard to the trade, dealings, affairs, or property of any company in course of being wound up, or of any person being a contributory of the company, so far as the company may be interested therein by reason of his being a contributory; and the order or commission to take the examination shall be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time; and the sheriff shall summon that person to appear before him at a time and place to be specified in the summons for examination on oath as a witness or as a haver, and to produce any books or papers called for which are in his possession or power.

(2) The sheriff may take the examination either orally or on written interrogatories, and shall report the same in writing in the usual form to the court; and shall transmit with the report the books and papers produced, if the originals thereof are required and specified by the order or commission, or otherwise copies thereof or extracts therefrom authenticated by the sheriff.

(3) If any person so summoned fails to appear at the time and place specified, or refuses to be examined or to make the production required, the sheriff shall proceed against him as a witness or haver duly cited and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland.

(4) The sheriff shall be entitled to such and the like fees, and the witness shall be entitled to such and the like allowances, as sheriffs when acting as commissioners under appointment from the Court of

Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland.

(5) If any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required, or on any other ground, the sheriff may, if he thinks fit, report the objection to the court, and suspend the examination of the witness until it has been disposed of by the court.

This section reproduces s. 127 of the Act of 1862.

Affidavits, &c., in United Kingdom and colonies.

228.—(1) Any affidavit required to be sworn under the provisions or for the purposes of this Part of this Act may be sworn in Great Britain or Ireland, or elsewhere within the dominions of His Majesty, before any court, judge, or person lawfully authorised to take and receive affidavits or before any of His Majesty's consuls or vice-consuls in any place outside His Majesty's dominions.

(2) All courts, judges, justices, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul, or vice-consul attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part of this Act.

This section reproduces s. 128 of the Act of 1862; compare R.S.C. Ord. XXXVIII., r. 6.

Companies Liquidation Account defined.

229.—(1) An account, called the Companies Liquidation Account, shall be kept by the Board of Trade with the Bank of England, and all moneys received by the Board in respect of proceedings under this Act in connexion with the winding up of companies in England shall be paid to that account.

(2) All payments out of money standing to the credit of the Board of Trade in the Companies Liquidation Account shall be made by the Bank of England in the prescribed manner.

See s. 11 (1), (5) of the Winding up Act of 1890, which is here reproduced. Compare s. 154, p. 169, *ante*.

Money paid in to the account which belongs to a shareholder cannot be attached: *Spence* v. *Coleman*, [1901] 2 K. B. 199.

Investment of surplus funds on general account.

230.—(1) Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the Board of Trade is required for the time being to answer demands in respect of companies' estates, the Board shall notify the excess to the Treasury, and shall pay over the whole or any part of that excess as the Treasury may require, to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the sums paid over, or any part thereof, in Government securities, to be placed to the credit of the said account.

(2) When any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of companies' estates, the Board shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to such account as the Treasury may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of proceedings in the winding up of companies in England.

Section 16 of the Winding up Act of 1890 was in similar terms.

As to the Companies Liquidation Account, see s. 229, p. 226, *ante*.

Separate accounts of particular estates.

231.—(1) An account shall be kept by the Board of Trade of the receipts and payments in the winding up of each company in England, and, when the cash balance standing to the credit of the account of any

company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Board shall, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the company.

(2) When any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the Board of Trade shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to the credit of the company.

(4) When the balance at the credit of any company's account in the hands of the Board of Trade exceeds two thousand pounds, and the liquidator gives notice to the Board that the excess is not required for the purposes of the liquidation, the company shall be entitled to interest on the excess at the rate of two per cent. per annum.

This section combines the provisions of ss. 17, 18 of the Winding up Act of 1890.

Certain receipts and fees to be applied in aid of expenditure.

232. The Treasury may issue to the Board of Trade in aid of the votes of Parliament, out of the receipts arising in respect of the winding up of companies in England from fees, fee stamps, and dividends on investments by the Treasury under this Act, any sums which may be necessary to meet the charges estimated by the Board in respect of salaries and expenses under this Act in relation to the winding up of companies in England.

This section repeats s. 19 of the Winding up Act of 1890, which only applied to England (s. 33).

Officers and remuneration.

233.—(1) The Board of Trade may, with the approval of the Treasury, appoint such additional officers as may be required by the Board for the

execution as respects England of this Part of this Act, and may remove any person so appointed.

(2) The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board performing any duties under this Part of this Act in relation to the winding up of companies in England, and may vary, increase, or diminish that remuneration as they think fit.

(3) The Lord Chancellor, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any person (other than an officer of the Board of Trade) performing any duties under this Act in relation to the winding up of companies in England, and may vary, increase, or diminish that remuneration as he thinks fit.

Section 27 of the Winding up Act of 1890 contained similar provisions.

Annual accounts of English winding up.

234.—(1) The Treasury shall annually cause to be prepared and laid before both Houses of Parliament an account for the year ending with the thirty-first day of March, showing the receipts and expenditure during that year in respect of proceedings under this Act in relation to the winding up of companies in England, and the provisions of section twenty-eight of the Supreme Court of Judicature Act, 1875, shall apply to the account as if the account had been required by that section.

(2) The accounts of the Board of Trade under this Act in relation to the winding up of companies in England shall be audited in such manner as the Treasury direct, and, for the purpose of the account to be laid before Parliament, the Board shall make such returns and give such information as the Treasury direct.

See s. 28 of the Winding up Act of 1890. Section 28 of the Judicature Act, 1875 (38 & 39 Vict. c. 77), relates to the annual account of fees and expenditure in respect of the High Court and Court of Appeal.

Returns by officers in English winding up.

235. The officers of the courts acting in the winding up of companies in England shall make to the Board of Trade such returns of the business of their respective courts and offices, at such times and in such manner and form as may be prescribed, and from those returns the Board shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

Section 29 (1) of the Winding up Act of 1890 contained a similar provision.

Proceedings of Board of Trade.

236.—(1) All documents purporting to be orders or certificates made or issued by the Board of Trade for the purposes of this Act and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence and deemed to be such orders or certificates without further proof unless the contrary is shown.

(2) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board, shall be conclusive evidence of the fact so certified.

Section 30 of the Winding up Act of 1890 was in practically identical terms. See, further, s. 284, p. 269, *post*.

Rules and Fees.

Rules and fees for winding up in England.

237.—(1) The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies in England.

(2) All general rules made under this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and, if Parliament is not sitting, within three weeks after the beginning of the next session of Parliament,

and shall be judicially noticed, and shall have effect as if enacted by this Act.

(3) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies in England such fees as the Lord Chancellor may, with the sanction of the Treasury, direct, and the Treasury may direct by whom and in what manner the same are to be collected and accounted for, and to what account they are to be paid.

(4) All rules made and directions given by the Lord Chancellor under this section shall be adopted by the authority for the time being empowered to make rules for regulating the practice or procedure in the chancery court of the county palatine of Lancaster, but as so adopted shall have effect with the substitution of the words "vice-chancellor" for the word "judge," and of the word "registrar" for the word "master," and of the words "chambers of the registrar" for the words "chambers of the judge" and "judge's chambers," and any directions as to the remuneration to be allowed to officers of that court in respect of proceedings under this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Lancaster.

(5) The authority having power to make rules or give directions under this section may, by any such rules or directions, repeal, alter, or amend any rules made and directions given by the like authority under the Companies (Winding Up) Act, 1890, which are in force at the commencement of this Act.

This section embodies s. 26 (1), (2), (4), (5) of the Winding up Act of 1890. Sub-sect. (5) is necessarily new.

Sub-sect. (1) gives power to make rules as to the carrying out of the winding-up jurisdiction of county courts, a view which was taken in framing the Companies (Winding up) Rules, 1903.

The effect of sub-sect. (2) is that after the rules have been laid before Parliament, and have not been annulled, they have statutory effect, and as long as they remain in force they cannot be questioned by any court; see *Institute of Patent Agents* v. *Lockwood*, [1894] A. C. 347.

Powers to make rules of procedure.

238.—(1) Subject to the provisions of this Act with respect to rules and fees in relation to the winding up of companies in England, rules of procedure for the purposes of this Act, including rules as to costs and fees, may be made—

(*a*) As regards the High Court in England, by the authority having power to make rules for the Supreme Court in England:

(*b*) As regards the Court of Session, by act of sederunt:

(*c*) As regards the High Court in Ireland, by the authority having power to make rules for the Supreme Court in Ireland:

(*d*) As regards the court exercising the stannaries jurisdiction, by the authority having power to make rules for county courts in England.

(2) The authority having power to make rules under this section may by any such rules repeal, alter, or amend any rules made by the like authority under the Companies Act, 1862, or any Act, amending the same, which are in force at the commencement of this Act.

This section is new in form, but contains no substantial innovation.

Certain county courts have jurisdiction under the Act, not only as regards winding up (see note to s. 237), but as regards reduction of capital and the alteration of a company's objects; but no provision is made as to making rules to carry out the jurisdiction of county courts in respect of these matters.

Special Provisions as to Stannaries.

Attachment of debt due to contributory on winding up in stannaries court.

239. When several companies are in course of liquidation by or under the superintendence of the court exercising the stannaries jurisdiction and acting under that jurisdiction, if it appears to the judge that a person who is a contributory of one of the companies is also a creditor claiming a debt against one of the other companies, the judge may (if after inquiry he thinks fit) direct that the debt, when

allowed, shall be attached, and payment thereof to the creditor suspended for a time certain as a security for payment of any calls that are or may in course of liquidation become due from him to the company of which he is a contributory; and the amount thereof shall be applied to such payment in due course:

Provided that such an order of attachment shall not prejudice any claim which the company so indebted to the creditor may have against him by way of set off, counterclaim, or otherwise, or any lawful claim of lien or specific charge on the debt in favour of any third person.

This section replaces s. 34 of the Stannaries Act, 1869 (32 & 33 Vict. c. 19), with the necessary alterations as to the jurisdiction. That Act does not extend (s. 3) "to companies registered under any of the Joint Stock Companies Acts, except where such companies are expressly mentioned or necessarily implied." The present enactment, however, applies apparently to companies within the jurisdiction under whatever Act registered.

Preferential payments in stannaries cases.

240. In the application to companies within the stannaries of the provisions of this Act with respect to preferential payments, the following modifications shall be made:—

(1) In the case of a clerk or servant of such a company, the priority with respect to wages and salary given by this Act shall be given to the extent of three months only, instead of four months, and shall not extend to the principal agent, manager, purser, or secretary:

(2) All wages in relation to the mine of a miner, artizan, or labourer employed in or about the mine, including all earnings by a miner arising from any description of piece or other work, or as a tributer or otherwise, but not exceeding an amount equal to three months wages, shall be included amongst the payments which are, under this Act, to be made in priority to other debts:

(3) Wages of any miner, artizan, or labourer unpaid at the commencement of the winding up, and, subject to the provisions of section five of the Workmen's Compensation Act, 1906, all amounts (not exceeding in any individual case one hundred pounds) due in respect of compensation under that Act payable to a miner or the dependants of a miner the liability wherefor accrued before the commencement of the winding-up, shall, to the extent aforesaid, be paid by the liquidator forthwith in priority to all costs, except (in the case of a winding-up by the court) such costs of and incidental to the making of the winding-up order as in the opinion of the court have been properly incurred, and to all claims by mortgagees, execution creditors, or any other persons, except the claims of clerks and servants in respect of their wages or salary, and, subject as aforesaid, the court may, by order, charge the whole or any part of the assets of the company, in priority to all claims and to all existing mortgages or charges thereon, with the payment of a sum sufficient to discharge the said wages and amounts due in respect of compensation, with interest at a rate not exceeding five per cent. per annum, and this charge may be made in favour of any person who is willing to advance the requisite amount or any part thereof; and as soon as the said sum has been so advanced, the said wages and amounts due in respect of compensation shall be paid without delay so far as the amount advanced extends, and in such order of payment as the court directs.

See the provisions with respect to preferential payments contained in s. 209, p. 209, *ante*.

The section consolidates and supplements the provisions contained in the Stannaries Act, 1869 (32 & 33 Vict. c. 19), s. 26, the Stannaries Act, 1887 (50 & 51

Vict. c. 43), ss. 2, 4, 9, 10, and the Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 5 (4). The repealed enactments were exceedingly difficult to follow, and somewhat ambiguous; but the present section, while not free from difficulty, has elucidated the matter considerably.

Provisions as to mine club funds.

241.—(1) On the winding up of a company within the stannaries, contributions of the miners, artizans, or labourers for the purpose of a mine club, or accident, or sick, or benefit fund shall not be deemed to be, or be applied as, part of the assets of the company in liquidation of the debts of the company or otherwise, but shall be accounted for by the purser or any other person in possession of the fund to the liquidator, and shall be recoverable by him, and be applied in accordance with the rules of the club.

(2) Where the company is being wound up voluntarily, the liquidator or any person claiming to be entitled to any such contributions or fund may apply to the court for directions, or to determine any question arising in the matter in the same manner as if the company were being wound up by the court.

This section replaces s. 13 (2) of the Stannaries Act, 1887 (50 & 51 Vict. c. 43), with slight verbal alterations to incorporate definitions from ss. 2 and 13 (1) of the same Act.

Removal of Defunct Companies from Register.

Registrar may strike defunct company off register.

242.—(1) Where the registrar of companies has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that

no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.

(3) If the registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Gazette, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the registrar may publish in the Gazette and send to the company a like notice as is provided in the last preceding subsection.

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of this notice the company shall be dissolved: Provided that the liability (if any) of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on the application of the company or member or creditor may, if satisfied that the company was at the time of the striking

off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or officer of the company, or, if there is no director or officer of the company whose name and address are known to the registrar of companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

This section embodies the provisions of s. 7 of the Act of 1880, as amended by s. 26 of the Act of 1900.

The court to which application may be made under sub-sect. (6), is the court having jurisdiction to wind up the company; see s. 285, p. 270, *post*. It was held, however in *Re Chaco (Paraguay) Land Co.*, [1901] W. N. 124, that any judge of the Chancery Division had power to make an order under the repealed section. Compare Rawlins and Macnaghten on Companies, p. 440.

As to the meaning of "Gazette," see s. 285, p. 271, *post*.

On an application under sub-sect. (6) to restore the name, the court has no power to impose a penalty as a condition of making the order. The restoration of the name does not relieve directors, or others, from the liability referred to in sub-sect. (5). To relieve them from the personal liability incurred by carrying on business after the company has been dissolved the court must make a special order under sub-sect. (6): *Re Brown Bayley's Steel Works, Ltd.* (1905), 21 T. L. R. 374.

When a company had been abortive, and had never carried on business, or had any directors or manager,

the court refused to make a restoration order for the mere purposes of saving stamp duty, and putting the company in a position to acquire property out of which the debt owing to the solicitor of the company might be paid: *Re British Incandescent Heating Syndicate, Ltd.* (unreported), Byrne, J., February 9, 1904.

Part V.

Registration Office and Fees.

Registration offices in England, Scotland, and Ireland.

243.—(1) For the purposes of the registration of companies under this Act, there shall be offices in England, Scotland, and Ireland, at such places as the Board of Trade think fit.

(2) The Board of Trade may appoint such registrars, assistant registrars, clerks, and servants as the Board think necessary for the registration of companies under this Act, and may make regulations with respect to their duties; and may remove any persons so appointed.

(3) The salaries of the persons appointed under this section shall be fixed by the Board of Trade with the concurrence of the Treasury, and shall be paid out of money provided by Parliament.

(4) The Board of Trade may require that the office of the registrar of the court exercising in respect of the winding up of companies the stannaries jurisdiction shall be one of the offices for the registration of companies within that jurisdiction.

(5) The Board may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(6) Any person may inspect the documents kept by the registrar on payment of such fees as may be appointed by the Board of Trade, not exceeding one shilling for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar, on payment for the certificate, certified

copy, or extract, of such fees as the Board of Trade may appoint, not exceeding five shillings for a certificate of incorporation, and not exceeding sixpence for each folio of a certified copy or extract, or in Scotland for each sheet of two hundred words.

(7) A copy of or extract from any document kept and registered at any of the offices for the registration of companies in England, Scotland, or Ireland, certified to be a true copy under the hand of the registrar or an assistant registrar (whose official position it shall not be necessary to prove) shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

(8) Whenever any act is by this Act directed to be done to or by the registrar of companies, it shall, until the Board of Trade otherwise directs, be done in England to or by the existing registrar of joint stock companies, or in his absence to or by such person as the Board may for the time being authorise; in Scotland to or by the existing registrar of joint stock companies in Scotland; and in Ireland to or by the existing assistant registrar of joint stock companies for Ireland, or to or by such person as the Board may for the time being authorise in Scotland or Ireland, in the absence of the registrar or assistant registrar; but, in the event of the Board altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the Board may appoint.

This section consolidates the provisions, so far as applicable, of s. 174 of the Act of 1862, and s. 6 of the Act of 1877.

"Document" includes (*inter alia*) registers; see s. 285, p. 270, *post;* and see definition of "the registrar of companies," and "the Registrar," *ibid.*

With regard to sub-sect. (4), by order dated December 1, 1862, and made by the Board of Trade under the corresponding provision of s. 174 of the Act of 1862, a registration office was established at Truro, the registrar for the time being of the court of the vice-warden of the Stannaries being appointed an assistant

registrar for conducting such business. On the abolition of the court of the vice-warden by the Stannaries Court (Abolition) Act, 1896 (59 & 60 Vict. c. 45), the Board by order dated April 1, 1897, revoked the order of 1862, and transferred the business of the office thereby established at Truro to Somerset House. It does not seem probable under the circumstances that the power conferred on the Board by sub-sect. (4) above will be exercised.

Fees.

244.—(1) There shall be paid to the registrar in respect of the several matters mentioned in Table B. in the First Schedule to this Act the several fees therein specified, or such smaller fees as the Board of Trade may from time to time direct.

(2) All fees paid to the registrar in pursuance of this Act shall be paid into the Exchequer.

The corresponding provisions in the 1862 Act were contained in s. 17. Table B is printed at pp. 301–303, *post*.

The mere fact that a promoter has paid the fees payable on the registration of a company does not entitle him to recover them from the company; see *Re National Motor Mail-Coach Co.*, [1908] 2 Ch. 515, overruling on this point *Re English and Colonial Produce Co.*, [1906] 2 Ch. 435, 439.

Part VI.

Application of Act to Companies formed and registered under former Companies Acts.

Application of Act to companies formed under former Companies Acts.

245. In the application of this Act to existing companies, it shall apply in the same manner in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares; in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and in the case of a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, or under the Companies Act, 1862, as the case may be.

This section is taken from s. 176 of the Act of 1862 with necessary modifications.

An "existing company" means a company formed and registered under the Joint Stock Companies Acts, or under the Act of 1862; see s. 285, p. 269, *post*.

The term "Joint Stock Companies Acts" means the Acts of 1856 and 1857, the Joint Stock Banking Companies Act, 1857, and the 21 & 22 Vict. c. 91, but not the Act 7 & 8 Vict. c. 110; see s. 285 and pp. 2, 7–14, *ante*.

Application of Act to companies registered under former Companies Acts.

246. This Act shall apply to every company registered but not formed under the Joint Stock Companies Acts, or the Companies Act, 1862, in the same manner as it is herein-after in this Act declared to apply to companies registered but not formed under this Act:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, or the Companies Act, 1862, as the case may be.

This section is based on s. 177 of the Act of 1862, references to that Act being added.

As to the application of this Act to companies not formed thereunder, but registered under Part VII. thereof, see s. 263, p. 249, *post*.

Application of Act to companies re-registered under Companies Act, 1879.

247. This Act shall apply to every unlimited company registered in pursuance of the Companies Act, 1879, as a limited company, in the same manner as it applies to an unlimited company registered in pursuance of this Act as a limited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered

as a limited company under the Companies Act, 1879.

See s. 57, p. 75, *ante*, s. 263 (iii), p. 251, *post*.
As to the Act of 1879, see p. 22, *ante*.

Mode of transferring shares.

248. A company registered under the Joint Stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

Section 178 of the Act of 1862 was in identical terms.

As to the meaning of "Joint Stock Companies Acts," see s. 285, p. 270, *post*.

Part VII.

Companies authorised to register under this Act.

Companies capable of being registered.

249.—(1) With the exceptions and subject to the provisions mentioned and contained in this section,—

(i) any company consisting of seven or more members, which was in existence on the second day of November eighteen hundred and sixty-two, including any company registered under the Joint Stock Companies Acts; and

(ii) any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act, or of letters patent, or being a company within the stannaries, or being otherwise duly constituted by law, and consisting of seven or more members;

may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up.

(2) Provided as follows:—

(*a*) A company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company as herein-after defined, shall not register in pursuance of this section:

(*b*) A company having the liability of its members limited by Act of Parliament or letters patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee:

(*c*) A company that is not a joint stock company as herein-after defined shall not register in pursuance of this section as a company limited by shares:

(*d*) A company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the regulations of the company) at a general meeting summoned for the purpose:

(*e*) Where a company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting:

(*f*) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount

as may be required, not exceeding a specified amount.

(3) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

(4) A company registered under the Companies Act, 1862, shall not be registered in pursuance of this section.

Sub-sect. (1) gives the effect of s. 180 of the Act of 1862. November 2, 1862, was the date when that Act came into operation.

See definition of the Joint Stock Companies Acts in s. 285, p. 270, *post*.

Sub-sects. (2) and (3) repeat the provisions of s. 179 of the Act of 1862. The definition of a joint-stock company for the purpose of this Part of the Act is contained in s. 250.

As to what is a "company" duly constituted by law, see *R.* v. *Registrar of Joint Stock Companies*, [1891] 2 Q. B. 598.

As to adding the word "Limited" to the name of a company registered under this section, see s. 258, p. 248, *post*.

Definition of joint stock company.

250. For the purposes of this Part of this Act, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons; and such a company when registered with limited liability under this Act shall be deemed to be a company limited by shares.

Section 181 of the Act of 1862 was in similar terms.

Liability of bank of issue

251.—(1) A bank of issue registered under this Act as a limited company shall not be entitled to

limited liability in respect of its notes; and the members thereof shall be liable in respect of its notes in the same manner as if it had been registered as unlimited; but if, in the event of the company being wound up, the general assets are insufficient to satisfy the claims of both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets. Unlimited in respect of notes.

(2) For the purposes of this section the expression "the general assets" means the funds available for payment of the general creditor as well as the note-holder.

(3) Any bank of issue registered under this Act as a limited company may state on its notes that the limited liability does not extend to its notes, and that the members of the company are liable in respect of its notes in the same manner as if it had been registered as an unlimited company.

See s. 6 of the Act of 1879, which was in similar terms.

As to banks having the right to issue notes, see Halsbury, Laws of England, Vol. I. pp. 571, 572.

252. Before the registration in pursuance of this Part of this Act of a joint stock company there shall be delivered to the registrar the following documents (that is to say):— Requirements for registration by joint stock companies.

(1) A list showing the names, addresses, and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number;

(2) A copy of any Act of Parliament, royal charter letters patent, deed of settlement, contract

of copartnery, cost book regulations, or other instrument constituting or regulating the company; and

(3) If the company is intended to be registered as a limited company, a statement specifying the following particulars (that is to say):—

(*a*) The nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists;

(*b*) The number of shares taken and the amount paid on each share;

(*c*) The name of the company, with the addition of the word "limited" as the last word thereof; and

(*d*) In the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

This section consolidates ss. 183, 185 of the Act of 1862.

As to what is a "joint stock company," see s. 250, p. 244, *ante*.

Requirements for registration by other than joint stock companies.

253. Before the registration in pursuance of this Part of this Act of any company not being a joint stock company, there shall be delivered to the registrar—

(1) A list showing the names, addresses, and occupations of the directors or other managers (if any) of the company; and

(2) A copy of any Act of Parliament, letters patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company; and

(3) In the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

Section 184 of the Act of 1862 contained similar provisions.

As to what is a "joint stock company," see s. 250, p. 244, *ante*.

Authentication of statements of existing companies.

254. The lists of members and directors and any other particulars relating to the company required to be delivered to the registrar shall be verified by a statutory declaration of any two or more directors or other principal officers of the company.

This replaces s. 186 of the Act of 1862.
As to the lists, etc., see s. 253.

Registrar may require evidence as to nature of company.

255. The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as hereinbefore defined.

See s. 187 of the Act of 1862. For definition of a joint-stock company, see s. 250, p. 244, *ante*.

On registration of banking company with limited liability, notice to be given to customers.

256.—(1) Where a banking company which was in existence on the seventh day of August eighteen hundred and sixty-two proposes to register as a limited company, it shall, at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.

(2) If the company omits to give the notice required by this section, then as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

This section replaces s. 188 of the Act of 1862, with a shortening of the language used. "Person" includes any body of persons, corporate or unincorporate; see Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 19.

The date August 7, 1862, is the date when the Act of 1862 received the Royal Assent.

Exemption of certain companies from payment of fees.

257. No fees shall be charged in respect of the registration in pursuance of this Part of this Act of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some other Act of Parliament or by letters patent.

Section 189 of the Act of 1862 contained a similar provision.

Addition of "limited" to name.

258. When a company registers in pursuance of this Part of this Act with limited liability, the word "limited" shall form and be registered as part of its name.

This section replaces s. 190 of the Act of 1862. The name of the company with the addition of "Limited" must be furnished on application for registration, see s. 252 (3), p. 246, *ante*.

Certificate of registration of existing companies.

259. On compliance with the requirements of this Part of this Act with respect to registration, and on payment of such fees, if any, as are payable under Table B. in the First Schedule to this Act, the registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands; and any banking company in Scotland so incorporated shall be deemed to be a bank incorporated, constituted, or established by or under Act of Parliament.

This section reproduces s. 191 of the Act of 1862. As to the effect of incorporation, see notes to s. 16, p. 43, *ante*.

As to the conclusiveness of the registrar's certificate, see s. 17, p. 44, *ante*. That section applies to certificates under s. 259.

Vesting of property on registration.

260. All property, real and personal (including things in action), belonging to or vested in a company

at the date of its registration in pursuance of this Part of this Act, shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

See s. 193 of the Act of 1862 which contained a similar provision. The date of registration is, presumably, the date of incorporation under s. 259.

See interpretation of "real and personal" as regards Scotland in s. 285, p. 271, *post*.

Saving for existing liabilities.

261. Registration of a company in pursuance of this Part of this Act shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

Section 194 of the Act of 1862 contained a like provision.

Continuation of existing actions.

262. All actions and other legal proceedings which at the time of the registration of a company in pursuance of this Part of this Act are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of the company on any judgment, decree, or order obtained in any such action or proceeding; but, in the event of the property and effects of the company being insufficient to satisfy the judgment, decree, or order, an order may be obtained for winding up the company.

This section replaces s. 195 of the Act of 1862.

Effect of registration under Act.

263. When a company is registered in pursuance of this Part of this Act—

(i) All provisions contained in any Act of Parliament, deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or

regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles:

(ii) All the provisions of this Act shall apply to the company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows (that is to say):—

(*a*) The regulations in Table A. in the First Schedule to this Act shall not apply unless adopted by special resolution;

(*b*) The provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered;

(*c*) Subject to the provisions of this section the company shall not have power to alter any provision contained in any Act of Parliament relating to the company;

(*d*) Subject to the provisions of this section the company shall not have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the company;

(*e*) The company shall not have power to alter any provision contained in a royal charter or letters patent with respect to the objects of the company;

(*f*) In the event of the company being wound up, every person shall be a contributory,

in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid; and every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and, in the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply:

(iii) The provisions of this Act with respect to—

(*a*) the registration of an unlimited company as limited;

(*b*) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;

(*c*) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up;

shall apply notwithstanding any provisions contained in any Act of Parliament, royal charter, deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company:

(iv) Nothing in this section shall authorise the company to alter any such provisions contained in any deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act:

(v) Nothing in this Act shall derogate from any power of altering its constitution or regulations which may by virtue of any Act of Parliament, deed of settlement, contract of copartnery, letters patent, or other instrument constituting or regulating the company, be vested in the company.

Paragraphs (i), (ii), (iv), and (v) of this section replace, with slight alterations, s. 196 of the Act of 1862, as affected by ss. 1, 3 (3) of the Memorandum of Association Act, 1890 (53 & 54 Vict. c. 62).

Paragraph (iii) expands the language of the enactment contained in s. 10 of the Act of 1879.

It should be observed that the enactments in s. 263 apply apparently only "when a company is registered in pursuance of *this Part* of the Act." See the beginning of the section. Paragraph (iii) reproduces a provision which was applicable to the case of a company, already registered under the Act of 1862, which re-registered under s. 4 of the Act of 1879. But such a company cannot register under Part VII. of the Act of 1908. See s. 249 (4) p. 244, *ante*.

As to the alterations in the memorandum (paragraph (iv)) which may be made under the Act, see note to s. 7, p. 35, *ante*.

Power to substitute

264.—(1) Subject to the provisions of this section, a company registered in pursuance of this Part of

this Act may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement. memorandum and articles for deed of settlement.

(2) The provisions of this Act with respect to confirmation by the court and registration of an alteration of the objects of a company shall so far as applicable apply to an alteration under this section with the following modifications:—

(*a*) There shall be substituted for the printed copy of the altered memorandum required to be delivered to the registrar of companies a printed copy of the substituted memorandum and articles; and

(*b*) On the registration of the alteration being certified by the registrar the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section the expression "deed of settlement" includes any contract of copartnery or other instrument constituting or regulating the company, not being an Act of Parliament, a royal charter, or letters patent.

This section combines the provisions contained in ss. 1, 2, and 3 of the Memorandum of Association Act, 1890, so far as they apply to companies authorised to register under this Act.

For the provisions as to alteration of objects, see s. 9, p. 37, *ante*.

265. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of a company registered in pursuance of this Part of Power of court to stay or restrain proceedings.

this Act, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

This section in effect reproduces s. 197 of the Act of 1862.

As to the power to restrain proceedings against the company, see s. 140, p. 158, *ante*; and compare s. 270, p. 261, *post*, as to unregistered companies.

Actions stayed on winding up order.

266. Where an order has been made for winding up a company registered in pursuance of this Part of this Act no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

See s. 198 of the Act of 1862, which is reproduced with a slight alteration elucidating the meaning.

Part VIII.

WINDING UP OF UNREGISTERED COMPANIES.

Meaning of unregistered company.

267. For the purposes of this Part of this Act the expression "unregistered company" shall not include a railway company incorporated by Act of Parliament (except in so far as is provided by the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and any Acts amending them), nor a company registered under the Joint Stock Companies Acts, or under the Companies Act, 1862, or under this Act, but, save as aforesaid, shall include any partnership, association, or company consisting of more than seven members, and any trustee savings bank certified under the Trustees Savings Banks Act, 1863, and any limited partnership.

This section consolidates with the opening words of s. 179 of the Act of 1862, the provisions of s. 3 of the Trustee Savings Bank Act, 1887 (50 & 51 Vict. c. 47), and s. 6 (4) of the Limited Partnerships Act, 1907 (7 Edw. 7, c. 24).

The provisions of the Abandonment of Railways Act, 1850 (13 & 14 Vict. c. 83), ss. 30–33 (referred to in the saving words), were repealed by s. 10 of the Abandonment of Railways Act, 1869 (32 & 33 Vict. c. 114), which substituted (s. 4) other provisions enabling a petition for winding up to be presented under the Companies Acts then in force.

See Rawlins and Macnaghten on Companies, pp. 458, 459; and Thring on Companies, 4th ed., 287, 288.

Section 6 (4) of the Limited Partnerships Act, 1907, was as follows:

"Application to the court to wind up a limited partnership shall be by petition under the Companies Acts, 1862 to 1900, and the provisions of those Acts relating to the winding up of companies by the court and of the rules made thereunder (including provisions as to fees) shall, subject to such modifications (if any) as the Lord Chancellor, with the concurrence of the President of the Board of Trade, may by rules provide apply to the winding up by the court of limited partnerships, with the substitution of general partners for directors."

The original Rules under the Limited Partnership Act, 1907, did not attempt to deal with the subject of winding up, and s. 6 (4), *supra*, is repealed by s. 286, p. 271, *post*, and Sched. 6, Part I., p. 324, *post*. But rules as to winding up limited partnerships have recently been issued: see [1909] W. N. 71 (January 20, 1909).

A colonial or foreign company, incorporated under the laws of a colony or foreign country, but having an office and shareholders here, may be wound up under s. 267: *Re English, Scottish, and Australian Chartered Bank*, [1893] 3 Ch. 385; *Re Union Bank of Calcutta* (1850), 3 De G. & Sm. 253; *Re Syria-Ottoman Railway Co.* (1904), 20 T. L. R. 217. So also may a water company incorporated under a special Act: *Re Barton-on-Humber and District Water Co.* (1889), 42 Ch. D. 585; *Re St. Neot's Water Co.* (1906), 22 T. L. R. 478.

A member of a club is not liable to pay to its funds or otherwise any money beyond his subscription: *Wise* v. *Perpetual Trustee Co.*, [1903] A. C. 139. And if the club is inadvertently ordered to be wound up as an unregistered company, the name of a member will be ordered to be removed from the list of contributories: *Re A. Martin Newcombe; Times*, October 21, 1908. See generally, as to dissolution of clubs, Halsbury, Laws of

England, Vol. IV. pp. 437, 438. But an ordinary club cannot be wound up as an unregistered company: *Re St. James's Club* (1852), 2 De G. M. & G. 383. Nor can a literary institution: *Re Bristol Athenæum* (1889), 43 Ch. D. 236.

A company which is not an unregistered company, but is not strictly a partnership, may be wound up in an action brought for that purpose: *Re Lead Company's Workmen's Fund Society*, [1904] 2 Ch. 196.

Winding up of unregistered companies.

268.—(1) Subject to the provisions of this Part of this Act, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions:—

(i) An unregistered company shall, for the purpose of determining the court having jurisdiction in the matter of the winding up, be deemed to be registered in that part of the United Kingdom where its principal place of business is situate; or if it has a principal place of business situate in more than one part of the United Kingdom, then in each part of the United Kingdom where it has a principal place of business; and the principal place of business situate in that part of the United Kingdom in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company:

(ii) No unregistered company shall be wound up under this Act voluntarily or subject to supervision:

(iii) The circumstances in which an unregistered company may be wound up are as follows (that is to say):—

(*a*) If the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(*b*) If the company is unable to pay its debts;

(*c*) If the court is of opinion that it is just

and equitable that the company should be wound up:

(iv) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts:—

(*a*) If a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;

(*b*) If any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of the notice paid, secured, or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages,

and expenses to be incurred by him by reason of the same;

(*c*) If in England or Ireland execution or other process issued on a judgment, decree, or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;

(*d*) If in Scotland the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made;

(*e*) If it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts:

(v) The court having jurisdiction to wind up a railway company under the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and the Acts amending them, shall be the High Court in England or Ireland, or the Court of Session in Scotland, according as the railway was authorised to be made in England, Ireland, or Scotland, and the special provisions of those Acts shall apply to the winding up with the substitution of references to this Act for references to the Companies Acts, 1862 and 1867:

Provided that, subject to general rules and to orders of transfer made, as respects England, under the authority of the Supreme Court of Judicature Act, 1873, and, as respects Ireland, under the authority of the Supreme Court of Judicature Act, (Ireland) Act, 1877, the jurisdiction of the High Court in England or Ireland under this provision shall be exercised by the Chancery Division of that Court:

(vi) A petition for winding up a trustee savings

bank may be presented by the National Debt Commissioners, or by a commissioner appointed under the Trustee Savings Banks Act, 1887, as well as by any person authorised under the other provisions of this Act to present a petition for winding up a company :

(vii) In the case of a limited partnership the provisions of this Act with respect to winding up shall apply with such modifications (if any) as may be provided by rules made by the Lord Chancellor with the concurrence of the President of the Board of Trade, and with the substitution of general partners for directors.

(2) Nothing in this Part of this Act shall affect the operation of any enactment which provides for any partnership, association, or company, being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by this Act, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act.

Sub-sect. (1) (i)–(iv) replaces s. 199 of the Act of 1862 without material change. See Rawlins and Macnaghten on Companies, pp. 459–461. Compare the provisions of ss. 129, 130, pp. 148, 149, *ante*.

Sub-sect. (1) (v) replaces s. 2 of the Abandonment of Railways Act, 1869 (32 & 33 Vict. c. 114), with amendments to harmonise with the other provisions of this Act (see ss. 132, 133, pp. 153, 154, *ante*).

Sub-sect. (1) (vi) is taken from s. 3 of the Trustee Savings Banks Act, 1887 (50 & 51 Vict. c. 47).

Sub-sect. (1) (vii) is from s. 6 (4) of the Limited Partnerships Act, 1907 (7 Edw. 7, c. 24).

Sub-sect. (2) is merely a saving for enactments not otherwise saved by the provisions of this section.

Where any Act passed after December 31, 1889, "repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted" (Interpretation Act,

1889 (52 & 53 Vict. c. 63), s. 38 (1)). By the Building Societies Act, 1894 (57 & 58 Vict. c. 47), s. 8 (1)—

"Notwithstanding anything in the Building Societies Acts, every society under those Acts shall be deemed to be a company within the meaning of the Companies (Winding Up) Act, 1890." Section 1 of that Act gave the High Court and other courts power to wind up "companies." See further as to the winding up of incorporated and unincorporated building societies: Halsbury, Laws of England, Vol. III. pp. 394, 398.

See now s. 129 of the Consolidation Act, p. 148, *ante*. By the Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), s. 58, "a registered society may be dissolved . . . by an order to wind up the society, or a resolution for the winding up thereof, made as is directed in regard to companies by the Companies Acts, 1862 to 1890, the provisions whereof shall apply to any such order or resolution."

Industrial and provident societies, and friendly societies, may, under the Acts by which they are respectively governed, turn themselves into companies under the Act of 1862 (or, now, the Companies (Consolidation) Act, 1908). See Industrial and Provident Societies Act, 1893, s. 54; Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 71.

Contributories in winding up of unregistered company.

269.—(1) In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid:

Provided that, in the case of an unregistered company within the stannaries, a past member shall not be liable to contribute to the assets of the company if he has ceased to be a member for two years or more either before the mine ceased to be worked or before the date of the winding-up order.

(2) In the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.

This section replaces s. 200 of the Act of 1862 and s. 25 of the Stannaries Act, 1869 (32 & 33 Vict. c. 19). Compare the provisions of ss. 126–128 (pp. 146–148, *ante*) as to liability in the event of the death, bankruptcy, or marriage of a contributory.

Power of court to stay or restrain proceedings.

270. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

This section replaces s. 201 of the Act of 1862. Compare s. 265, p. 253, *ante*, and see s. 140, p. 158, *ante*.

Actions stayed on winding-up order.

271. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

This section replaces s. 202 of the Act of 1862; compare s. 142, p. 159, *ante*, and s. 266, p. 254, *ante*.

Directions as to property in certain cases.

272. If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the court may by the winding-up order, or by any subsequent order, direct that all or any part of the property, real and personal (including things in action), belonging to the company, or to trustees on its behalf, is to vest in the

liquidator by his official name, and thereupon the property or the part thereof specified in the order shall vest accordingly; and the liquidator may, after giving such indemnity (if any) as the court may direct, bring or defend in his official name any action or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property.

This section replaces s. 203 of the Act of 1862; see Rawlins and Macnaghten on Companies, p. 465.

Provisions of Part of Act cumulative.

273. The provisions of this Part of this Act with respect to unregistered companies shall be in addition to and not in restriction of any provisions herein-before in this Act contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part of this Act.

This section replaces s. 204 of the Act of 1862. See *Rudow* v. *Great Britain Mutual Society* (1881), 17 Ch. D. 600, 612.

Part IX.

Companies established outside the United Kingdom.

Requirements as to companies established outside the United Kingdom.

274.—(1) Every company incorporated outside the United Kingdom which establishes a place of business within the United Kingdom shall within one month from the establishment of the place of business file with the registrar of companies—

(*a*) a certified copy of the charter, statutes, or

memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;

(*b*) a list of the directors of the company;

(*c*) the names and addresses of some one or more persons resident in the United Kingdom authorised to accept on behalf of the company service of process and any notices required to be served on the company;

and, in the event of any alteration being made in any such instrument or in the directors or in the names or addresses of any such persons as aforesaid, the company shall within the prescribed time file with the registrar a notice of the alteration.

(2) Any process or notice required to be served on the company shall be sufficiently served if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(3) Every company to which this section applies shall in every year file with the registrar such a statement in the form of a balance sheet as would, if it were a company formed and registered under this Act and having a share capital, be required under this Act to be included in the annual summary.

(4) Every company to which this section applies, and which uses the word "Limited" as part of its name, shall—

(*a*) in every prospectus inviting subscriptions for its shares or debentures in the United Kingdom state the country in which the company is incorporated; and

(*b*) conspicuously exhibit on every place where it carries on business in the United Kingdom the name of the company and the country in which the company is incorporated; and

(*c*) have the name of the company and of the country in which the company is incorporated mentioned in legible characters in

all bill-heads and letter paper, and in all notices, advertisements, and other official publications of the company.

(5) If any company to which this section applies fails to comply with any of the requirements of this section the company, and every officer or agent of the company, shall be liable to a fine not exceeding fifty pounds, or, in the case of a continuing offence, five pounds for every day during which the default continues.

(6) For the purposes of this section—

The expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;

The expression "place of business" includes a share transfer or share registration office;

The expression "director" includes any person occupying the position of director, by whatever name called; and

The expression "prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of the company.

(7) There shall be paid to the registrar for registering any document required by this section to be filed with him a fee of five shillings or such smaller fee as may be prescribed.

This section replaces s. 35 of the Act of 1907 without material alteration, the time limit referring to the commencement of that Act being omitted, and the definitions of "director" and "prospectus" in s. 30 of the Act of 1900, which are incorporated by s. 52 of the Act of 1907, being included.

The fee prescribed by the Board of Trade under the Act of 1907 was 5*s.*; see Board of Trade Regulations of June 30, 1908 (W. N. July 11, 1908, p. 221), Forms No 2 F., No. 3 F., No. 4 F., No. 5 F., No. 6 F., No. 7 F.

Power of companies incorporated

275. A company incorporated in a British possession which has filed with the registrar of companies the documents and particulars specified in

paragraphs (*a*), (*b*), and (*c*) of subsection (1) of the last foregoing section shall have the same power to hold lands in the United Kingdom as if it were a company incorporated under this Act. in British possessions to hold lands.

This section replaces the enactment contained in the Companies Act, 1908 (8 Edw. 7, c. 12).

As to the meaning of "British possession," see Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 18 (2).

Part X.

SUPPLEMENTAL.

Legal Proceedings, Offences, &c.

276.—(1) All offences under this Act made punishable by any fine may be prosecuted under the Summary Jurisdiction Acts. Prosecution of offences.

(2) In Scotland all prosecutions for offences or fines under the provisions of this Act relating to—

(*a*) the appointment of directors;

(*b*) the restrictions on commencement of business by a company;

(*c*) returns as to allotments;

(*d*) false statements in respect of which a penalty is provided by this Part of this Act;

(*e*) the filing of copies of a prospectus, an order revoking the dissolution, or an order sanctioning the reorganisation of the share capital of a company;

(*f*) the filing of notice of appointment of a liquidator or of the accounts of a receiver or manager;

(*g*) general meetings;

(*h*) companies established outside the United Kingdom;

(*i*) the issue of debentures and certificates of shares and debenture stock;

(*j*) the issue, circulation, and publication of balance sheets;

(*k*) unqualified persons acting as directors;
(*l*) the inspection of registers of debenture holders and the furnishing of copies of trust deeds;

shall be at the instance of the Lord Advocate or a procurator fiscal as the Lord Advocate may direct.

Sub-sect. (1) repeats s. 49 of the Act of 1907. Sub-sect. (2) replaces s. 34 (3) of the Act of 1900, enumerating the offences and fines under that Act and the Act of 1907, which (s. 52 (1)) had effect as part of the Act of 1900. The provisions as to the offences and fines referred to were contained in the following sections of the Acts of 1900 and 1907 respectively, namely:—(*a*) 1900, s. 2; (*b*) 1900, s. 6; (*c*) 1900, s. 7; (*d*) 1900, s. 28; (*e*) 1907, ss. 3, 31, 39; (*f*) 1907, ss. 26, 41; (*g*) 1907, s. 24; (*h*) 1907, s. 35; (*i*) 1907, s. 5; (*j*) 1907, s. 19; (*k*) 1900, s. 3; (*l*) 1907, s. 18.

The Summary Jurisdiction Acts are 11 & 12 Vict. c. 43; 42 & 43 Vict. c. 49; 47 & 48 Vict. c. 43.

Applications of fines.

277. The court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose suit the fine is recovered, and subject to any such direction all fines under this Act shall, notwithstanding anything in any other Act, be paid into the Exchequer.

This section replaces s. 66 of the Act of 1862.

Costs in actions by certain limited companies.

278. Where a limited company is plaintiff or pursuer in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

This section replaces s. 69 of the Act of 1862. The section only applies to limited companies. For decisions under the repealed enactment, see Rawlins and Macnaghten on Companies, p. 284, and Yearly Practice, 1909, pp. 995, 867.

Power of court to grant relief in certain cases.

279. If in any proceeding against a director, or person occupying the position of director, of a company for negligence or breach of trust it appears to the court hearing the case that the director or person is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think proper.

This section repeats s. 32 of the Act of 1907, incorporating the definition of "director" contained in s. 30 of the Act of 1900.

The concluding words of the section are taken from s. 3 of the Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35); see Yearly Practice, 1909, p. 1533; Underhill on Trusts, 6th ed. pp. 389–391.

Jurisdiction of stannaries court.

280.—(1) In the case of a company subject to the stannaries jurisdiction, the court exercising the stannaries jurisdiction shall have and exercise the like jurisdiction and powers, as well on the common law as on the equity side thereof, as the Court of the Vice-Warden of the stannaries possessed before the commencement of the Stannaries Court (Abolition) Act, 1896, by custom, usage, or statute in the case of unincorporated companies, but only so far as is consistent with the provisions of this Act and with the constitution of companies as prescribed or required by this Act.

(2) For the purpose of giving fuller effect to that jurisdiction, all process issuing out of the said court, and all orders, rules, demands, notices, warrants, and summonses required or authorised by the practice of the court to be served on any company, whether registered or not registered, or on any member or contributory thereof, or on any officer, agent, director, manager, or servant thereof, may be served in any part of England without any special order of the judge for that purpose, or by such special order may be served in any part of the British Islands, on such terms and conditions as the court may think fit:

Provided that no such service of process out of the limits of the stannaries in any suit or plaint on the common law side of the court shall be effected without the special order of the judge made on a statement of the nature and object of the suit or plaint.

(3) All decrees, orders, and judgments of the said court may be enforced in the same manner in which decrees, orders, and judgments of the Court of the Vice-Warden of the stannaries could before its abolition have been by law enforced, whether within or beyond the stannaries.

This section (apart from the proviso to sub-sect. (2)) repeats with only necessary alterations the corresponding provisions of s. 68 of the Act of 1862. The proviso is taken from the repealed s. 31 of the Stannaries Act, 1869 (32 & 33 Vict. c. 19).

The court now exercising the stannaries jurisdiction is the county court of Cornwall; see note to s. 1, p. 31, *ante*.

Penalty for false statement.

281. If any person in any return, report, certificate, balance sheet, or other document, required by or for the purposes of any of the provisions of this Act specified in the Fifth Schedule hereto, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanor, and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and on summary conviction to imprisonment for a term not exceeding four months, with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment as aforesaid:

Provided that the fine imposed on summary conviction shall not exceed one hundred pounds.

This section replaces s. 28 of the Act of 1900.

The provisions specified in the Fifth Schedule (p. 323, *post*) are those previously contained in ss. 1, 2, 6, 7, 12, 19, 21, and 22 of the Act of 1900, and ss. 1, 10, 41, 26, 27, 35, and 47 of the Act of 1907, which (s. 52 (1)) had effect as part of the Act of 1900.

282. If any person or persons trade or carry on business under any name or title of which "Limited" is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding five pounds for every day upon which that name or title has been used. Penalty for improper use of word "Limited."

This section re-enacts s. 48 of the Act of 1907.

Report by Board of Trade.

283. The Board of Trade shall cause a general annual report of matters within this Act to be prepared and laid before both Houses of Parliament. Annual report by Board of Trade.

See s. 47 of the Act of 1907.

Authentication of Documents issued by Board of Trade.

284. Any approval, sanction, or licence, or revocation of licence, which under this Act may be given or made by the Board of Trade may be under the hand of a secretary or assistant secretary of the Board, or of any person authorised in that behalf by the President of the Board. Authentication of documents issued by Board of Trade.

This section replaces s. 46 of the Act of 1907, the wording being altered so as to apply to the terminology employed in the new Act. See further, s. 236, p. 230, *ante*.

Interpretation, &c.

285. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them (that is to say):— Interpretation.

"Existing company" means a company formed and registered under the Joint Stock Companies Acts, or under the Companies Act, 1862;

"Company" means a company formed and registered under this Act or an existing company;

"Articles" means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in Table B. in the Schedule annexed to the Joint Stock Companies Act, 1856, or in Table A. in the First Schedule annexed to the Companies Act, 1862, or in that Table as altered in pursuance of section seventy-one of that Act, or in Table A. in the First Schedule to this Act;

"Memorandum" means the memorandum of association of a company, as originally framed or as altered in pursuance of the provisions of this Act;

"Document" includes summons, notice, order, and other legal process, and registers;

"Share" means share in the share capital of the company, and includes stock except where a distinction between stock and shares is expressed or implied;

"Debenture" includes debenture stock;

"Books and papers" and "books or papers" include accounts, deeds, writings, and documents;

"The registrar of companies," or, when used in relation to registration of companies, "the registrar," means the registrar or other officer performing under this Act the duty of registration of companies in England, Scotland, or Ireland, or in the stannaries, as the case requires;

"The court" used in relation to a company means the court having jurisdiction to wind up the company;

"Joint Stock Companies Acts" means the Joint Stock Companies Act, 1856, the Joint Stock Companies Acts, 1856, 1857, the Joint Stock Banking Companies Act, 1857, and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts, as the case

may require; but does not include the Act passed in the eighth year of the reign of Her Majesty Queen Victoria, chapter one hundred and ten, intituled An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies;

"The Gazette" means, as respects companies registered in England, the London Gazette; as respects companies registered in Scotland, the Edinburgh Gazette; and, as respects companies registered in Ireland, the Dublin Gazette;

"Real and personal," as respects Scotland, means heritable and moveable;

"General rules" means general rules made under this Act, and includes forms;

"Prescribed" means, as respects the provisions of this Act relating to the winding-up of companies, prescribed by general rules, and as respects the other provisions of this Act, prescribed by the Board of Trade;

"Company within the stannaries" means a company engaged in or formed for working mines within the stannaries;

"The court exercising the stannaries jurisdiction" used in relation to any proceedings means the county court in which the jurisdiction formerly exercised by the court of the vice-warden of the stannaries in respect of those proceedings is for the time being vested;

"Director" includes any person occupying the position of director by whatever name called;

"Prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company.

Repeal of Acts and Transitional Provisions.

Repeal of Acts and savings.

286.—(1) The Acts mentioned in the First Part of the Sixth Schedule to this Act are hereby repealed

to the extent specified in the third column of that Part:

Provided that the repeal shall not affect—

(*a*) The incorporation of any company registered under any enactment hereby repealed; nor

(*b*) Table B. in the Schedule annexed to the Joint Stock Companies Act, 1856, or any part thereof, so far as the same applies to any company existing at the commencement of this Act; nor

(*c*) Table A. in the First Schedule annexed to the Companies Act, 1862, or any part thereof (either as originally contained in that Schedule or as altered in pursuance of section seventy-one of that Act) so far as the same applies to any company existing at the commencement of this Act; nor

(*d*) The continuance in force of the enactments set out in the Second Part of the Sixth Schedule to this Act, being the enactments continued in force by section two hundred and five of the Companies Act, 1862.

(2) The mention of particular matters in this section or in any other section of this Act shall not prejudice the general application of section thirty-eight of the Interpretation Act, 1889, with regard to the effect of repeals.

The proviso to sub-sect. (1) follows the saving provisions of ss. 205, 206 of the Act of 1862.

The Sixth Schedule is printed at pp. 324–326, *post*.

Sub-sect. (2) is similar to the provision contained in s. 745 (2) of the Merchant Shipping Act, 1894.

The Interpretation Act, 1889, is 52 & 53 Vict. c. 63.

Saving of pending proceedings for winding up.

287. The provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not passed, and, for the purposes of the winding up, the Act or Acts under

which the winding up commenced shall be deemed to remain in full force.

Compare the repealed s. 207 of the Act of 1862 and s. 31 (1) of the Winding up Act of 1890.

The existing rules are the Companies (Winding up) Rules, 1903.

Saving of deeds.

288. Every conveyance, mortgage, or other deed, made before the commencement of this Act in pursuance of any enactment hereby repealed, shall be of the same force as if this Act had not passed, and for the purposes of that deed the repealed enactment shall be deemed to remain in full force.

See s. 208 of the Act of 1862, which contained a like provision.

Former registration offices, registers, official receivers, &c., continued.

289.—(1) The offices existing at the commencement of this Act in England, Scotland, and Ireland for registration of joint stock companies shall be continued as if they had been established under this Act.

(2) Registers of companies kept in any such existing offices shall respectively be deemed part of the registers of companies to be kept under this Act.

(3) The existing registrars, assistant registrars, officers, clerks, and servants in those offices shall during the pleasure of the Board of Trade hold the offices and receive the salaries hitherto held and received by them, but subject to any regulations of the Board of Trade with regard to the execution of their duties.

(4) The existing official receivers and officers of the Board of Trade appointed for the execution of the Companies (Winding Up) Act, 1890, shall during the pleasure of the Board of Trade hold the offices and receive the salaries or remuneration hitherto held and received by them.

(5) Persons, other than officers of the Board of Trade, performing any duties under the Companies (Winding Up) Act, 1890, and receiving therefor any salary or remuneration by the direction of the Lord Chancellor, shall during his pleasure receive

the salaries or remuneration hitherto received by them.

(6) The Companies Liquidation Account under this Act shall be deemed to be in continuation of the Companies Liquidation Account under the Companies (Winding Up) Act, 1890.

Saving for existing rules of procedure, &c.

290. Until revoked and except as varied under the powers of this Act, the general rules and orders, and scales of fees, under the Companies (Winding Up) Act, 1890, in force at the commencement of this Act, and the rules of court in force at the commencement of this Act in England, Scotland, and Ireland respectively with respect to the procedure for reduction of capital, and to winding up companies, and the practice and procedure for winding up companies in England, Scotland, and Ireland respectively in force at the commencement of this Act, shall, so far as they are not inconsistent with this Act, continue in force.

Substitution of provisions of this Act for provisions of repealed Acts.

291. Where any enactment repealed by this Act is mentioned or referred to in any document, that document shall be read as if the corresponding provision (if any) of this Act were therein mentioned or referred to and substituted for the repealed enactment.

Saving for 28 & 29 Vict. c. 78, s. 3.

292. Nothing in this Act shall affect the power of a company to alter its memorandum under the provisions of section three of the Mortgage Debenture Act, 1865.

Besides the requirements as to the objects of the company, a company cannot avail itself of the Mortgage Debenture Act, 1865, unless its paid-up capital is not less than £100,000, and each share is of the nominal value of not less than £50, of which not less than one-tenth nor more than one-half is paid up.

The Act only applies to such incorporated companies as are entitled to advance money on the security of land, and whose objects are limited as mentioned in s. 3 of the Act; although a company constituted under the Act of 1862 before June 29, 1865, for the purpose of making advances on real securities, and whose memorandum of association includes but is not limited to the specified

objects, may by special resolution limiting its objects, and by otherwise complying with the requirements of the Act, bring itself within the Act. The Act contains 53 sections, and has not been much utilised.

Saving for Life Assurance Companies Acts.

293. Nothing in this Act shall affect the provisions of the Life Assurance Companies Acts, 1870 to 1872, except that references in those Acts to any provision of the Companies Act, 1862, shall be read as references to the corresponding provision of this Act.

See as to the Life Assurance Acts, 1870 to 1872 (33 & 34 Vict. c. 61; 34 & 35 Vict. c. 58; 35 & 36 Vict. c. 41), p. 21, *ante*. Sects. 18, 21, and 22 of the Act of 1870, and ss. 4 and 5 of the Act of 1872, contain special provisions as to winding up companies under those Acts.

This section and s. 294 might have been omitted in reliance on the Interpretation Act, 1889 (52 & 53 Vict. c. 63). See note to s. 268, p. 259, *ante*.

Saving for 34 & 35 Vict. c. 31, s. 5.

294. Nothing in this Act shall affect the provisions of section five of the Trade Union Act, 1871, except that the reference in that section to the Companies Acts, 1862 and 1867, shall be read as a reference to this Act.

The Trade Union Act, 1871, s. 5, provides that the Companies Acts, 1862 and 1867, shall not apply to any trade union, and the registration of any trade union thereunder shall be void.

See notes to s. 268, p. 259, *ante*, and s. 293.

Short title.

295. This Act may be cited as the Companies (Consolidation) Act, 1908.

Commencement of Act.

296. This Act shall come into operation on the first day of April nineteen hundred and nine.

SCHEDULES.

FIRST SCHEDULE.

Sections 10, 11, 67, 263, 285.

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES (*a*).

Preliminary.

1. In these regulations, unless the context otherwise requires, expressions defined in the Companies (Consolidation) Act, 1908 (*b*), or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined; and words importing the singular shall include the plural, and vice versâ, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

Business.

2. The directors shall have regard to the restrictions on the commencement of business imposed by section

(*a*) These provisions are substantially the same as those of the revised Table A issued by the Board of Trade in 1906. If articles of association are not registered, Table A applies to a company limited by shares, and if articles are registered, Table A applies except in so far as it is excluded or modified by the articles; see s. 11, p. 40, *ante*. Clear words should be used to exclude Table A, or to point out how far it is to apply: *Fisher* v. *Black and White Publishing Co.*, [1901] 1 Ch. 174. A company limited by guarantee, or unlimited, must have articles, and they may adopt all or any part of Table A, but except as adopted it does not apply to those companies; see s. 10, p. 39, *ante*. Table A having statutory authority, any provisions therein contained may be adopted by articles in the same terms: see *Lock* v. *Queensland Investment and Land Mortgage Co.*, [1896] A. C. 461.

(*b*) See s. 285, p. 269, *ante*.

eighty-seven of the Companies (Consolidation) Act, 1908, if, and so far as, those restrictions are binding upon the company (*c*).

Shares.

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall mutatis mutandis apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class (*d*).

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections eighty-five and eighty-eight of the Companies (Consolidation) Act, 1908, as may be applicable thereto (*e*).

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him

(*c*) See p. 105, *ante*, and *New Druce-Portland Co.* v. *Blakiston* (1908), 24 T. L. R. 583.

(*d*) See *Hemans* v. *Hotchkiss Ordnance Co.*, [1899] 1 Ch. 115.

(*e*) As to s. 85, see p. 103, *ante*. As to s. 88, see p. 107, *ante*.

and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all (*f*).

7. If a share certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding one shilling, and on such terms, if any, as to evidence and indemnity as the directors think fit (*g*).

8. No part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares (*h*).

Lien.

9. The company shall have a lien on every share (not being a fully-paid share) (*i*) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.

10. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists, is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is

(*f*) As to the right to a clean certificate, see *Re W. Key & Son, Ltd.*, [1902] 1 Ch. 407.

(*g*) As to the company's duty with reference to the certificate on a transfer, see *Longman* v. *Bath Electric Tramways, Ltd.*, [1905] 1 Ch. 646; *Rainford* v. *Keith*, [1905] 2 Ch. 147.

(*h*) This clause need only be adopted where a Stock Exchange quotation is required.

(*i*) As to altering the clause so as to make it apply to shares which are fully paid up, see *Allen* v. *Gold Reefs of West Africa, Ltd.*, [1901] 1 Ch. 656.

presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or bankruptcy to the share.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on Shares.

12. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.

13. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

14. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five pounds per cent. per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

15. The provisions of these regulations as to payment of interest shall apply in the case of nonpayment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

16. The directors may make arrangements on the issue of shares for a difference between the holders in

the amount of calls to be paid and in the times of payment (*j*).

17. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent.) as may be agreed upon between the member paying the sum in advance and the directors (*k*).

Transfer and Transmission of Shares.

18. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

19. Shares in the company shall be transferred in the following form, or in any usual or common form (*l*) which the directors shall approve:

I, A.B. of in consideration of the sum of £ paid to me by C.D. of (hereinafter called "the said transferee") do hereby transfer to the said transferee the share [*or* shares] numbered in the undertaking called the Company Limited, to hold unto the said transferee, his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution thereof: and I, the said transferee, do hereby agree to take the said share [*or* shares] subject to the conditions aforesaid. As witness our hands the day of

Witness to the signatures of, &c. (*m*)

(*j*) See s. 39 (1), p. 61, *ante*.

(*k*) See s. 39 (2), p. 61, *ante*; *Lock* v. *Queensland Investment and Land Mortgage Co.*, [1896] A. C. 461.

(*l*) See *Re Letherby and Christopher, Ltd.*, [1904] 1 Ch. 815.

(*m*) As to transfers in blank, see *Ireland* v. *Hart*, [1902] 1 Ch. 522.

20. The directors may decline to register any transfer of shares, not being fully-paid shares, to a person of whom they do not approve (*n*), and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless—

(*a*) a fee not exceeding two shillings and sixpence is paid to the company in respect thereof, and

(*b*) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer (*o*).

21. The executors or administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

22. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy (*p*).

23. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be

(*n*) In the case of a private company some further restriction may be necessary; see s. 121, p. 140, *ante*. See, as to clause 20, *Chida Mines* v. *Anderson*, [1905] 22 T. L. R. 27. As to the directors seeing that the transfer is properly stamped, see *Maynard* v. *Consolidated Kent Collieries Corporation*, [1903] 2 K. B. 121.

(*o*) See *Rainford* v. *Keith*, [1905] 2 Ch. 147.

(*p*) See *Re W. Key & Son*, [1902] 1 Ch. 467, as to clause 13 of the old Table A.

entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of Shares (*q*).

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued (*r*).

25. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of nonpayment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit (*s*), and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit (*t*).

(*q*) Provisions in Table A or in articles giving power to forfeit shares are valid: *Trevor* v. *Whitworth* (1887), 12 App. Cas. 409; *Bellerby* v. *Rowland & Marwood's Steamship Co.*, [1902] 2 Ch. 14.

(*r*) As to restraining forfeiture in action for rescission, see *Lamb* v. *Sambas Rubber and Gutta Percha Co.*, [1908] 1 Ch. 845.

(*s*) As to the price at which partly paid shares may be sold, see *Morrison* v. *Trustees Executors, &c., Corporation* (1899), 68 L. J. Ch. 11. As to the purchaser's liability on partly paid shares, see *Re Randt Gold Mining Co.*, [1904] 2 Ch. 468; *Randt Gold Mining Co.* v. *New Balkis Eersteling, Ltd.*, [1904] A. C. 165.

(*t*) As to cancellation with a view to making the holder liable, see *Re Exchange Trust, Ltd.*, [1903] 1 Ch. 711.

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

29. A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

30. The provisions of these regulations as to forfeiture shall apply in the case of nonpayment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of Shares into Stock.

31. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock, and may with the like sanction reconvert any stock into paid-up shares of any denomination (*u*).

32. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and

(*u*) See ss. 41–43, pp. 63–65, *ante*.

restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

33. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

34. Such of the regulations of the company (other than those relating to share warrants) as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

Share Warrants (v).

35. The company may issue share warrants, and accordingly the directors may in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence, if any, as the directors may from time to time require, as to the identity of the person signing the request, and on receiving the certificate, if any, of the share, and the amount of the stamp duty on the warrant and such fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons, or otherwise for the payment of dividends, or other moneys, on the shares included in the warrant.

36. A share warrant shall entitle the bearer to the shares included in it, and the shares shall be transferred by the delivery of the share warrant, and the provisions of the regulations of the company, with respect to transfer and transmission of shares shall not apply thereto.

37. The bearer of a share warrant shall, on surrender

(*v*) See ss. 37, 38, pp. 58–61, *ante*.

of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

38. The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share warrant. The company shall, on two days' written notice, return the deposited share warrant to the depositor.

39. Subject as herein otherwise expressly provided no person shall, as bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote, or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company ; but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

40. The directors may from time to time make rules as to the terms on which (as they shall think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss, or destruction.

Alteration of Capital.

41. The directors may, with the sanction of an extraordinary resolution of the company, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe (*w*).

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered

(*w*) As to increase of capital, see ss. 41, 44, pp. 63, 65, *ante*.

to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and, after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

43. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital.

44. The company may, by special resolution (*x*)—

(*a*) Consolidate and divide its share capital into shares of larger amount than its existing shares :

(*b*) By subdivision of its existing shares, or any of them, divide the whole, or any part, of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to the provisions of paragraph (*d*) of subsection (1) of section forty-one of the Companies (Consolidation) Act, 1908 :

(*c*) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person :

(*d*) Reduce its share capital in any manner and with, and subject to, any incident authorised, and consent required, by law.

General Meetings.

45. The statutory general meeting of the company shall be held within the period required by section sixty-five of the Companies (Consolidation) Act, 1908 (*y*).

(*x*) As to special resolutions, see ss. 69, 70, pp. 84–86, *ante*. As to (*a*), (*b*), and (*c*), see s. 41, p. 63, *ante*. As to (*d*), see ss. 46–56, pp. 67–74, *ante*.

(*y*) See p. 80, *ante*.

46. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) (*z*) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

47. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary (*a*).

48. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section sixty-six of the Companies (Consolidation) Act, 1908 (*b*). If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Proceedings at General Meeting.

49. Seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business (*c*) shall be given in manner hereinafter

(*z*) See s. 64, p. 79, *ante*.

(*a*) Apart from any special provision, directors cannot postpone an ordinary meeting: *Smith* v. *Paringa Mines, Ltd.*, [1906] 2 Ch. 193.

(*b*) See p. 82, *ante*, and *Hooper* v. *Kerr, Stuart & Co.* (1901), 83 L. T. 729.

(*c*) See *Tiessen* v. *Henderson*, [1899] 1 Ch. 861; *Normandy* v. *Ind, Coope & Co.*, [1908] 1 Ch. 84.

mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting (*d*).

50. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance-sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

51. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

52. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

54. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

55. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment

(*d*) As to service at a member's registered address after his death, see *Allen* v. *Gold Reefs of West Africa, Ltd.*, [1900] 1 Ch. 656.

took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against that resolution.

57. If a poll is duly demanded it shall be taken in such manner as the chairman directs (*e*), and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

58. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

59. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members.

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

61. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be

(*e*) When the voting is personally or by proxy—see clause (64) — the chairman cannot have a poll taken by signed voting papers: *McMillan* v. *Le Roi Mining Co.*, [1906] 1 Ch. 331.

determined by the order in which the names stand in the register of members.

62. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, curator bonis, or other person in the nature of a committee or curator bonis appointed by that court, and any such committee, curator bonis, or other person may, on a poll, vote by proxy.

63. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid (*f*).

64. On a poll votes may be given either personally or by proxy (*g*).

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the common seal, or under the hand of an officer or attorney so authorised (*h*). No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation (*i*).

66. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid (*j*).

67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve :—

(*f*) As to forfeited shares held by a purchaser, see *Randt Gold Mining Co.* v. *Wainwright*, [1901] 1 Ch. 184.

(*g*) See *MacMillan* v. *Le Roi Mining Co.*, [1906] 1 Ch. 331.

(*h*) See s. 68, and note, p. 84, *ante*.

(*i*) The nominee need not be a shareholder when he is appointed proxy: *Bombay-Burmah Trading Corporation* v. *Shroff*, [1905] A. C. 213. As to partners, see S. C. For a meeting of a particular class of shareholders, proxies should be given to members of the class: *Re Central Bahia Railway Co.* (1902), 18 T. L. R. 503.

(*j*) See *Foerster* v. *Newlands (West Griqualand) Diamond Mines, Ltd.* (1902), 18 T. L. R. 497.

Company, Limited.

"I of in the county of being a member of the Company, Limited, hereby appoint of as my proxy to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the company to be held on the day of and at any adjournment thereof."

Signed this day of (*k*).

Directors (*l*).

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association (*m*).

69. The remuneration of the directors shall from time to time be determined by the company in general meeting (*n*).

(*k*) As to filling in blanks after stamping and signature, see *Sadgrove* v. *Bryden*, [1907] 1 Ch. 318. When the policy of directors is attacked they may pay, out of the company's funds, the cost of stamping and posting proxy papers: *Peel* v. *L. & N. W. Railway Co.*, [1907] 1 Ch. 5.

(*l*) As to a company without directors or having only another company as its director, see *Re Bulawayo Market and Offices Co.*, [1907] 2 Ch. 458.

(*m*) See *Woolf* v. *East Nigel Gold Mining Co.* (1905), 21 T. L. R. 660. As to when the directors' remuneration begins, see *Re London Gigantic Wheel Co.* (1908), 24 T. L. R. 618.

(*n*) As to the liability of the directors for paying one of their body something beyond the remuneration allowed, see *Merchants' Fire Office, Ltd.* v. *Armstrong* (1901), 17 T. L. R. 709. Without first altering articles as to remuneration, the company cannot ratify an act of the directors which contravenes them: *Boschoek Proprietary Co.* v. *Fuke*, [1906] 1 Ch. 148. As to the apportionment of remuneration, see *Inman* v. *Ackroyd & Best, Ltd.*, [1901] 1 Q. B. 613. As to postponing payment, see *Caridad Copper Mining Co.* v. *Swallow*, [1902] 2 K. B. 44. As to charging railway fares and hotel expenses, see *Young* v. *Naval and Military Civil Service Co-operative Society of South Africa*, [1905] 1 K. B. 687. As to extra remuneration, see *Normandy* v. *Ind, Coope & Co.*, [1908] 1 Ch. 84. A director of a company holding shares in another company who acts for the former as a director of

70. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section seventy-three of the Companies (Consolidation) Act, 1908 (*o*).

Powers and Duties of Directors.

71. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the said Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made (*p*).

72. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors; but his appointment shall be subject to determination ipso facto if he ceases from any cause to be a director, or if the company in

the latter may retain any remuneration for his own benefit: *Re Dover Coalfield Extension, Ltd.*, [1908] 1 Ch. 65. As to the company's lien on shares for fees paid by mistake, see *Re Bodega Co.*, [1904] 1 Ch. 276.

(*o*) See p. 88, *ante*.

(*p*) As to the shareholders overriding the directors in their management, see *Automatic Self-Cleansing Filter Syndicate Co.*, [1906] 2 Ch. 34; *Salmon* v. *Quin & Axtens, Ltd.*, [1908] W. N. 254; *Marshall's Valve Gear Co.* v. *Manning, Wardle & Co.*, [1909] 1 Ch. 267.

general meeting resolve that his tenure of the office of managing director or manager be determined (*pp*).

73. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

74. The directors shall duly comply with the provisions of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company, or created by it (*q*), and to keeping a register of the directors (*r*), and to sending to the Registrar of Companies an annual list of members, and a summary of particulars relating thereto (*s*), and notice of any consolidation (*t*) or increase of share capital (*u*), or conversion of shares into stock (*v*), and copies of special resolutions (*w*), and a copy of the register of directors and notifications of any changes therein (*x*).

75. The directors shall cause minutes to be made in books provided for the purpose—

(*a*) of all appointments of officers made by the directors;

(*b*) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(*c*) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors,

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose (*y*).

(*pp*) See *Bluett* v. *Stutchberry's Ltd.* (1908), 24 T. L. R. 469; *Horn* v. *Henry Faulder & Co.* (1908), 99 L. T. 524. As to personal liability through signing promissory notes, see *Chapman* v. *Smethurst*, [1909] 1 Ch. 73.

(*q*) See s. 93, p. 113, *ante*.

(*r*) See s. 75, p. 89, *ante*.

(*s*) See s. 26, p. 50, *ante*. "Default" in sub-sect. (5) of that section means wilful neglect: *Dorté* v. *South African Super-Aeration, Ltd.* (1904), 20 T. L. R. 425.

(*t*) See s. 42, p. 65, *ante*.

(*u*) See s. 44, p. 65, *ante*.

(*v*) See ss. 42, 43, p. 65, *ante*.

(*w*) See s. 70, p. 86, *ante*, which also applies to extraordinary resolutions.

(*x*) See s. 75, p. 89, *ante*.

(*y*) See s. 71, p. 87, *ante*.

The Seal.

76. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualifications of Directors.

77. The office of director shall be vacated (*z*), if the director—

(*a*) ceases to be a director by virtue of section seventy-three of the Companies (Consolidation) Act, 1908 (*a*); or

(*b*) holds any other office of profit under the company except that of managing director or manager (*b*); or

(*c*) becomes bankrupt; or

(*d*) is found lunatic or becomes of unsound mind; or

(*e*) is concerned or participates in the profits of any contract with the company (*c*):

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director: but a director shall not vote in respect of any such contract or work, and if he does so vote his vote shall not be counted (*d*).

(*z*) The office is automatically vacated by any of the acts specified, and the board cannot waive the vacation: *Re Bodega Co.*, [1904] 1 Ch. 276. Subject to any special provision a director may resign, and his notice of resignation cannot be withdrawn without the company's consent: *Glossop* v. *Glossop*, [1906] 2 Ch. 370.

(*a*) See pp. 88, 89, *ante*.

(*b*) Accepting the trusteeship of a debenture deed is within the clause: *Astley* v. *New Tivoli, Ltd.*, [1899] 1 Ch. 151.

(*c*) See *Costa Rica Rivaz Co.* v. *Forwood*, [1901] 1 Ch. 746.

(*d*) See *Re British America Corporation* (1903), 19 T.L.R. 662.

Rotation of Directors.

78. At the first ordinary meeting of the company the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest to one-third, shall retire from office.

79. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

80. A retiring director shall be eligible for re-election.

81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

82. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and, if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall be deemed to have been re-elected at the adjourned meeting (*e*).

83. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

84. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director (*f*).

85. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for

(*e*) See *Bennett Bros., Ltd.* v. *Lewis* (1904), 20 T. L. R. 1.

(*f*) As to appointments in an informal manner, see *Smith* v. *Paringa Mines, Ltd.*, [1906] 1 Ch. 193.

election by the company at that meeting as an additional director.

86. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors.

87. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

88. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three (*g*).

89. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

90. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

91. The directors may delegate any of their powers to

(*g*) The quorum must consist of directors who are competent to act as to the particular matters before them, and not wholly or partly made up of directors who are, *e.g.* disqualified under clause (77) (*Re Greymouth Point Elizabeth Railway & Coal Co.*, [1904] 1 Ch. 92).

committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on them by the directors (*h*).

92. A committee may elect a chairman of their meetings: if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

94. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director (*i*).

Dividends (j) and Reserve.

95. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

96. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company (*k*).

(*h*) The power must be used *bonâ fide*, and not for the purpose of excluding a director: *Bray* v. *Smith* (1908), 124 L. T. Journ. 293.

(*i*) Compare s. 74, p. 89, *ante*; and see *British Asbestos Co.* v. *Boyd* (1903), 73 L. J. Ch. 31; *Transport, Ltd.* v. *Schonburg* (1905), 21 T. L. R. 305.

(*j*) As to clauses purporting to prevent the apportionment of dividends, see *Re Oppenheimer*, [1907] 1 Ch. 399.

(*k*) As to postponing payment of declared interim dividends, see *Lagunas Nitrate Co.* v. *Schroeder & Co.* (1901), 85 L. T. 22. See also, as to interim dividends, *Lucas* v. *Fitzgerald* (1904), 20 T. L. R. 17.

97. No dividend shall be paid otherwise than out of profits (*l*).

98. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares (*m*), but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

99. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit (*n*).

100. If several persons are registered as joint holders of any share any one of them may give effectual receipts for any dividend payable on the share.

101. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein.

102. No dividend shall bear interest against the company.

Accounts.

103. The directors shall cause true accounts to be kept—

Of the sums of money received and expended by the

(*l*) As to what is profit, see *Bond* v. *Barrow Haematite Steel Co.*, [1902] 1 Ch. 353; *Foster* v. *New Trinidad Lake Asphalt Co.*, [1901] 1 Ch. 208. As to refunding dividends improperly paid, see *Lucas* v. *Fitzgerald*, (1904) 20 T. L. R. 17; *Towers* v. *African Tug Co.*, [1904] 1 Ch. 558.

(*m*) See s. 39 (3), p. 61, *ante*.

(*n*) See *Fisher* v. *Black and White Publishing Co.*, [1901] 1 Ch. 174; *Wemyss Collieries Trust, Ltd.* v. *Melville* (1906), 8 F. 143. As to investment of the reserve, see *Burland* v. *Earle*, [1902] A. C. 83.

company and the matter in respect of which such receipt and expenditure takes place, and

Of the assets and liabilities of the company.

104. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

105. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

106. Once at least in every year the directors shall lay before the company in general meeting a profit and loss account for the period since the preceding account or (in the case of the first account) since the incorporation of the company, made up to a date not more than six months before such meeting.

107. A balance sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance-sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount, if any, which they propose to carry to a reserve fund.

108. A copy of the balance sheet and report shall, seven days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

Audit.

109. Auditors shall be appointed and their duties regulated in accordance with sections one hundred and twelve and one hundred and thirteen of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force (*o*).

(*o*) As to s. 112, see p. 132, *ante*, and as to s. 113, see p. 133, *ante*, and *Newton* v. *Birmingham Small Arms Co.* [1906] 2 Ch. 378.

Notices.

110. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address in the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

111. If a member has no registered address in the United Kingdom and has not supplied to the company an address within the United Kingdom for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company, shall be deemed to be duly given to him on the day on which the advertisement appears.

112. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share.

113. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, in the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

114. Notice of every general meeting shall be given in some manner hereinbefore authorized to (*a*) every member of the company (including bearers of share warrants) except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them, and also to (*b*) every person entitled to a share in consequence of

the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

TABLE B.

Sections 244, 259.

TABLE OF FEES to be paid to the REGISTRAR of COMPANIES.

I.—By a company having a share capital (*p*).

	£	*s.*	*d.*
For registration of a company whose nominal share capital does not exceed 2,000*l.* . .	2	0	0
For registration of a company whose nominal share capital exceeds 2,000*l.*, the following fees, regulated according to the amount of nominal share capital (that is to say);			

(*p*) See s. 244, p. 240, *ante*. Stamp duty is, in addition, payable under s. 112 of the Stamp Act, 1891 (54 & 55 Vict. c. 39), as amended by s. 7 of the Finance Act, 1899 (62 & 63 Vict. c. 9), and s. 5 of the Revenue Act, 1903 (3 Edw. 7, c. 46). These require a statement of the nominal share capital of a company to be registered with limited liability to be delivered to the Registrar of Joint Stock Companies, and a statement of the amount of any increase of registered capital of a company already registered with limited liability to be delivered to the Registrar within fifteen days after the passing of the resolution for increase (5 per cent. interest being charged in case of default); and each such statement is charged with an *ad valorem* stamp duty of 5*s.* for every £100, and any fraction of £100 over any multiple of £100, of the amount of such capital or increase of capital. The duty seems to be payable on an increase of capital although the new shares are in substitution for cancelled or other shares: see *Midland Railway Co.* v. *Attorney-General*, [1902] A. C. 171; *Attorney-General* v. *Gas Light and Coke Co.* (1903), 19 T. L. R. 12; *Attorney-General* v. *Regent's Canal and Dock Co.*, [1904] 1 K. B. 263; *Attorney-General* v. *London and India Docks Co.* (1906), 95 L. T. 536.

The mere fact that a promoter has paid the registration fees and *ad valorem* duty on registration does not entitle him to recover the amount from the company: *Re National Motor Mail-Coach Co.*, [1908] 2 Ch. 515.

	£	*s.*	*d.*
For every 1,000*l.* of nominal share capital, or part of 1,000*l.*, up to 5,000*l.* . .	1	0	0
For every 1,000*l.* of nominal share capital, or part of 1,000*l.*, after the first 5,000*l.*, up to 100,000*l.* . . .	0	5	0
For every 1,000*l.* of nominal share capital, or part of 1,000*l.*, after the first 100,000*l.*	0	1	0

	£	*s.*	*d.*
For registration of any increase of share capital made after the first registration of the company, the same fees per 1,000*l.*, or part of a 1,000*l.*, as would have been payable if the increased share capital had formed part of the original share capital at the time of registration :			
Provided that no company shall be liable to pay in respect of nominal share capital, on registration or afterwards, any greater amount of fees than 50*l.*, taking into account in the case of fees payable on an increase of share capital after registration the fees paid on registration.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
For registering any document by this Act required or authorised to be registered, other than the memorandum or the abstract required to be filed with the registrar by a receiver or manager or the statement required to be sent to the registrar by the liquidator in a winding up in England .	0	5	0
For making a record of any fact by this Act required or authorised to be recorded by the registrar	0	5	0

II.—By a company not having a share capital.

	£	*s.*	*d.*
For registration of a company whose number of members, as stated in the articles, does not exceed 20	2	0	0
For registration of a company whose number of members, as stated in the articles, exceeds 20, but does not exceed 100 . . .	5	0	0
For registration of a company whose number of members, as stated in the articles, exceeds 100, but is not stated to be unlimited, the above fee of 5*l.*, with an additional 5*s.* for every 50 members or less number than 50 members after the first 100.			
For registration of a company in which the number of members is stated in the articles to be unlimited	20	0	0
For registration of any increase on the number of members made after the registration of the company in respect of every 50 members, or less than 50 members, of that increase .	0	5	0
Provided that no company shall be liable to pay on the whole a greater fee than 20*l.* in respect of its number of members, taking into account the fee paid on the first registration of the company.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
For registering any document by this Act required or authorised to be registered, other than the memorandum or the abstract required to be filed with the registrar by a receiver or manager or the statement required to be sent to the registrar by the liquidator in a winding up in England .	0	5	0
For making a record of any fact by this Act required or authorised to be recorded by the registrar	0	5	0

Section 108.

FORM C.

FORM OF STATEMENT to be published by BANKING and INSURANCE COMPANIES, and DEPOSIT, PROVIDENT, or BENEFIT SOCIETIES (*q*).

* The share capital of the company is , divided into shares of each.

The number of shares issued is

Calls to the amount of pounds per share have been made, under which the sum of pounds has been received.

The liabilities of the company on the first day of January (*or* July) were—

Debts owing to sundry persons by the company.

On judgment, £

On specialty, £

On notes or bills, £

On simple contracts, £

On estimated liabilities, £

The assets of the company on that day were—

Government securities [*stating them*]

Bills of exchange and promissory notes, £

Cash at the bankers, £

Other securities, £

* If the company has no share capital the portion of the statement relating to capital and shares must be omitted.

(*q*) See s. 108, p. 129, *ante*.

SECOND SCHEDULE.

Section 108.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

STATEMENT IN LIEU OF PROSPECTUS

filed by

LIMITED

pursuant to section eighty-two of the Companies (Consolidation) Act, 1908 (*r*).

Presented for filing by

THE COMPANIES (CONSOLIDATION) ACT, 1908.

LIMITED.

STATEMENT IN LIEU OF PROSPECTUS.

The nominal share capital of the company	£
Divided into	Shares of £ each. " " " " " "
Names, descriptions, and addresses of directors or proposed directors.	
Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid-up otherwise than in cash. The consideration for the intended issue of those shares and debentures.	1. shares of £ fully paid. 2. shares upon which £ per share credited as paid. 3. debenture £ 4. Consideration.

(*r*) See p. 98, *ante*.

Names and addresses of (*a*) vendors of property purchased or acquired, or proposed to be (*b*) purchased or acquired by the company (*c*). Amount (in cash, shares, or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price £ Cash . . . . £ Shares . . . £ Debentures . . £ Goodwill . . . £
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company, or Rate of the commission . .	Amount paid. „ payable. Rate per cent.
Estimated amount of preliminary expenses	£
Amount paid or intended to be paid to any promoter. Consideration for the payment.	Name of promoter. Amount £ Consideration :—
Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the filing of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	

(*a*) For definition of vendor, see s. 81 (2) of the Companies (Consolidation) Act, 1908.

(*b*) See s. 81 (3) of the Companies (Consolidation) Act, 1908.

(*c*) Notes (*a*) and (*b*) are in the statute itself. As to s. 81 (2), (3), see p. 96, *ante*.

Names and addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.	
Whether the articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance sheets or reports of the auditors or other reports.	Nature of the provisions.

(Signatures of the persons above-named as directors or proposed directors, or of their agents, authorised in writing.)

THIRD SCHEDULE.

FORM A.

Section 118 (*d*).

MEMORANDUM of ASSOCIATION of a company limited by shares.

1st. The name of the company is "The Eastern Steam Packet Company, Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. The share capital of the company is two hundred thousand pounds divided into one thousand shares of two hundred pounds each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.	Number of Shares taken by each Subscriber.
1. John Jones of in the county of merchant	200
2. John Smith of in the county of	25
3. Thomas Green of in the county of	30
4. John Thompson of in the county of	40
5. Caleb White of in the county of	15
6. Andrew Brown of in the county of	5
7. Cæsar White of in the county of	10
Total shares taken	325

Dated the day of 19 .

Witness to the above signatures,

A.B., No. 13, Hute Street, Clerkenwell, London.

(*d*) See p. 137, *ante*. See also s. 3 p. 32, *ante*.

FORM B.

MEMORANDUM and ARTICLES of ASSOCIATION of a company limited by Guarantee, and not having a share capital (*e*).

Memorandum of Association.

1st. The name of the company is "The Mutual London Marine Association, Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding ten pounds.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones of in the county of merchant.
2. John Smith of in the county of
3. Thomas Green of in the county of
4. John Thompson of in the county of
5. Caleb White of in the county of
6. Andrew Brown of in the county of
7. Cæsar White of in the county of

Dated the day of 19 .

Witness to the above signatures,
A.B., No. 13, Hute Street, Clerkenwell, London.

(*e*) See s. 4 (1), p. 33, *ante*.

ARTICLES of ASSOCIATION to accompany preceding MEMORANDUM of ASSOCIATION (*f*).

Number of Members.

1. The company, for the purpose of registration, is declared to consist of five hundred members.

2. The directors herein-after mentioned may, whenever the business of the association requires it, register an increase of members.

Definition of Members.

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations herein-after contained.

General Meetings.

4. The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

5. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

6. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

7. The directors may, whenever they think fit, and shall, on a requisition made in writing by any five or more members, convene an extraordinary general meeting.

(*f*) See s. 10, p. 39, *ante*. The articles may adopt all or any of the regulations of Table A (*ibid.*). As to the cases on the form of Articles in Form B, so far as it follows that Table, see the notes on Table A, pp. 276–301, *ante*.

8. Any requisition made by the members must state the object of the meeting proposed to be called, and must be signed by the requisitionists and deposited at the registered office of the company.

9. On receipt of the requisition the directors shall forthwith proceed to convene a general meeting: if they do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists or any other five members, may themselves convene a meeting.

Proceedings at General Meetings.

10. Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of the business, shall be given to the members in manner herein-after mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such a notice by any member shall not invalidate the proceedings at any general meeting.

11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of the business. The quorum shall be ascertained as follows (that is to say), if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed thirty.

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened on the requisition of the members, shall be dissolved; in any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting

a quorum of members is not present, it shall be adjourned sine die.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of that meeting.

16. The chairman may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at least three members, a declaration by the chairman that a resolution has been carried and an entry to that effect in the book of proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Votes of Members.

19. Every member shall have one vote and no more.

20. If any member is a lunatic or idiot he may vote by his committee curator bonis, or other legal curator.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. On a poll votes may be given either personally or by proxy. A proxy shall be appointed in writing under the hand of the appointor, or if such appointor is a corporation, under its common seal.

23. No person shall act as a proxy unless he is a member, or unless he is appointed to act at the meeting as proxy for a corporation.

The instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following form:—

Company, Limited.

of in the county of being a member of the Company, Limited, hereby appoint of as my proxy, to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the company to be held on the day of and at any adjournment thereof.

Signed this day of .

Directors.

25. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed the subscribers of the memorandum of association shall for all the purposes of the Companies (Consolidation) Act, 1908, be deemed to be directors.

Powers of Directors.

27. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by the Companies (Consolidation) Act, 1908, or by any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

Election of Directors.

28. The directors shall be elected annually by the company in general meeting.

Business of Company.

[*Here insert Rules as to Mode in which Business of Insurance is to be conducted.*]

Audit.

29. Auditors shall be appointed and their duties regulated in accordance with sections one hundred and twelve and one hundred and thirteen of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, and for this purpose the said sections shall have effect as if the word "members" were substituted for "shareholders," and as if "first general meeting" were substituted for "statutory meeting."

Notices.

30. A notice may be given by the company to any member either personally, or by sending it by post to him to his registered address.

31. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones of in the county of merchant.
2. John Smith of in the county of
3. Thomas Green of in the county of
4. John Thompson of in the county of
5. Caleb White of in the county of
6. Andrew Brown of in the county of
7. Cæsar White of in the county of

Dated the day of 19 .

Witness to the above signatures,

A.B., No. 13, Hute Street, Clerkenwell, London.

FORM C.

MEMORANDUM and ARTICLES of ASSOCIATION of a company limited by guarantee, and having a share capital.

Memorandum of Association (*g*).

1st. The name of the company is "The Highland Hotel Company, Limited."

(*g*) See s. 4 (2), p. 33, *ante*.

2nd. The registered office of the company will be situate in Scotland.

3rd. The objects for which the company is established are "the facilitating travelling in the Highlands of Scotland, by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges, and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding twenty pounds.

6th. The share capital of the company shall consist of five hundred thousand pounds, divided into five thousand shares of one hundred pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Description of Subscribers.		Number of Shares taken by each Subscriber.
1. John Jones of	in the county of	200
2. John Smith of	in the county of	25
3. Thomas Green of	in the county of	30
4. John Thompson of	in the county of	40
5. Caleb White of	in the county of	15
6. Andrew Brown of	in the county of	5
7. Cæsar White of	in the county of	10
Total shares taken		325

Dated the day of 19 .

Witness to the above signatures,

A.B., No. 13, Hute Street, Clerkenwell, London.

Articles of Association to accompany preceding Memorandum of Association (h).

1. The directors may, with the sanction of the company in general meeting, reduce the amount of shares in the company.

2. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

3. All the articles of Table A. of the Companies (Consolidation) Act, 1908, shall be deemed to be incorporated with these articles and to apply to the company (*i*).

Names, Addresses, and Description of Subscribers.

1. John Jones of in the county of merchant.
2. John Smith of in the county of
3. Thomas Green of in the county of
4. John Thompson of in the county of
5. Caleb White of in the county of
6. Andrew Brown of in the county of
7. Cæsar White of in the county of

Dated the day of 19 .

Witness to the above signatures,
A.B., No. 13, Hute Street, Clerkenwell, London.

FORM D.

MEMORANDUM and ARTICLES of ASSOCIATION of an unlimited company having a share capital.

Memorandum of Association (j).

1st. The name of the company is "The Patent Stereotype Company."

(*h*) See s. 10, p. 39, *ante*. The form of articles given is defective, as it does not, as required by s. 10 (3), "state the amount of share capital with which the company proposes to be registered."

(*i*) See s. 10 (2), p. 39, *ante*.

(*j*) See s. 5, p. 34, *ante*.

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are the "working of a patent method of founding and casting stereotype plates, of which method John Smith, of London, is the sole patentee."

WE the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Description of Subscribers.		Number of Shares taken by each Subscriber.
1. John Jones of	in the county of	3
2. John Smith of	in the county of	2
3. Thomas Green of	in the county of	1
4. John Thompson of	in the county of	2
5. Caleb White of	in the county of	2
6. Andrew Brown of	in the county of	1
7. Abel Brown of	in the county of	1
Total shares taken		12

Dated the day of 19 .

Witness to the above signatures.
A.B., No. 20, Bond Street, London.

Articles of Association to accompany the preceding Memorandum of Association (*k*).

1. The share capital of the company is two thousand pounds, divided into twenty shares of one hundred pounds each (*l*).

2. All the articles of Table A of the Companies (Consolidation) Act, 1908, shall be deemed to be in-

(*k*) See s. 10 (1), p. 39, *ante*.

(*l*) See s. 10 (3), p. 39, *ante*.

corporated with these articles and to apply to the company (*m*).

Names, Addresses, and Description of Subscribers.

1. John Jones of in the county of merchant.
2. John Smith of in the county of
3. Thomas Green of in the county of
4. John Thompson of in the county of
5. Caleb White of in the county of
6. Andrew Brown of in the county of
7. Abel Brown of in the county of

Dated the day of 19 .

Witness to the above signatures,
A.B., No. 20, Bond Street, London.

Section 26 (*n*).

FORM E as required by Part II. of the Act (*o*).

SUMMARY of SHARE CAPITAL and SHARES of the COMPANY, LIMITED, made up to the day of 19 (being the fourteenth day after the date of the first ordinary general meeting in 19).

Nominal share capital £ divided into [1] { shares of £ each. / shares of £ each.

Total number of shares taken up [1] to the day of 19 (which number must agree with the total shown in the list as held by existing members).

Number of shares issued subject to payment wholly in cash . . . .

Number of shares issued as fully paid up otherwise than in cash . . . .

Number of shares issued as partly paid up to the extent of per share otherwise than in cash . . . .

[2] There has been called up on each of shares . . . . . £

There has been called up on each of shares . . . . . £ .

(*m*) See s. 10 (2), p. 39, *ante*.

(*n*) See p. 50, *ante*.

(*o*) The references [1], [2], [3], [4] in this form are in the statute itself.

[2] There has been called up on each of shares . . . . . £ .

[3] Total amount of calls received, including payments on application and allotment £ .

Total amount (if any) agreed to be considered as paid on shares which have been issued as fully paid up otherwise than in cash . . . . . £ .

Total amount (if any) agreed to be considered as paid on shares which have been issued as partly paid up to the extent of per share . . £ .

Total amount of calls unpaid . . . £ .

Total amount (if any) of sums paid by way of commission in respect of shares or debentures or allowed by way of discount since date of late summary . . £ .

Total amount (if any) paid on [4] shares forfeited . . . . . £ .

Total amount of shares and stock for which share warrants are outstanding . £ .

Total amount of share warrants issued and surrendered respectively since date of last summary . . . . . £ .

Number of shares or amount of stock comprised in each share warrant . .

Total amount of debt due from the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies, or which would require registration if created after the first day of July nineteen hundred and eight . . . £ .

STATEMENT in the form of a balance sheet made up to the day of 19 , containing the particulars of the capital, liabilities, and assets of the company.

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[1] When there are shares of different kinds or amounts (*e.g.*, Preference and Ordinary, or 10*l.* or 5*l.*) state the numbers and nonimal values separately.

[2] Where various amounts have been called or there are shares of different kinds state them separately.

[3] Include what has been received on forfeited as well as on existing shares.

[4] State the aggregate number of shares forfeited (if any).

The Return must be signed at the end by the manager or secretary of the company.

Presented for filing by

LIST OF PERSONS holding shares in the Company, Limited, on the day of 19 , and of persons who have held shares therein at any time since the date of the last return, showing their names and addresses and an account of the shares so held (*p*).

Folio in Register Ledger containing Particulars.	NAMES, ADDRESSES, AND OCCUPATIONS.				ACCOUNT OF SHARES.					Remarks.
	Surname.	Christian name.	Address.	Occupation.	† Number of Shares held by existing Members at Date of Return.	§ Particulars of Shares transferred since the Date of the last Return by Persons who are still Members.		§ Particulars of Shares transferred since the Date of the last Return by Persons who have ceased to be Members.		
						Number ‡	Date of Registration of Transfer.	Number ‡	Date of Registration of Transfer.	

† The aggregate number of shares held, and not the distinctive numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.

‡ When the shares are of different classes these columns may be subdivided so that the number of each class held or transferred may be shown separately.

§ The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor and not opposite that of the transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer.

NAMES AND ADDRESSES of the persons who are the Directors of the Limited on the day of 19 .

(*p*) The references †, ‡, and § in this form are contained in the statute itself.

Names.	Addresses.

NOTE.—Banking companies must add a list of all their places of business.

(Signature)_____

(State whether manager or secretary)

FORM F.

LICENCE TO HOLD LANDS.

The Board of Trade hereby license the to hold the lands hereunder described (*insert description of lands*) [*or* to hold lands not exceeding in the whole acres].

Section 20 (*q*).

The conditions of this licence are (*insert conditions, if any*).

(*q*) This reference in the statute is incorrect, it should be to s. 19; see p. 45, *ante*.

Section 181.

FOURTH SCHEDULE.

Part I.

Orders Pronounced in Vacation in Scotland which are to be Final.

Orders :—

s. 169. As to time for proving claims.

s. 174. As to the attendance of, and production of documents by, persons indebted to, or having property of, or information as to the affairs or property of, a company.

s. 219. As to meetings for ascertaining wishes of creditors or contributories.

s. 120. As to summoning meetings of creditors or contributories where a compromise is proposed.

s. 227. As to the examination of witnesses in regard to the property or affairs of a company.

Part II.

Orders Pronounced in Vacation in Scotland which are to take effect until Reclaiming Note disposed of.

Orders :—

ss. 140, 142, 144, 266, 270, 271. Restraining or permitting commencement or continuance of legal proceedings.

ss. 149, 186, 202. Appointing an official liquidator to fill a vacancy, or appointing (except to fill a vacancy caused by the removal of a liquidator by the court) a liquidator for a winding up voluntarily or under supervision.

s. 151. Sanctioning the exercise of any power by an official liquidator other than the power to appoint a law agent or to sell property.

s. 164. Requiring the delivery of property or documents to the official liquidator.

s. 176. As to the arrest and detention of an absconding contributory and his property.

s. 151 (5). Limiting the powers of provisional official liquidators.

s. 199. For continuance of winding up under supervision.

FIFTH SCHEDULE.

PROVISIONS REFERRED TO IN SECTION 281 OF THE ACT (*r*). Section 281.

Provisions relating to—	
The conclusiveness of certificates of incorporation;	s. 17.
Restrictions on appointments or advertisement of directors;	s. 72.
Restrictions on commencement of business;	s. 87.
Returns as to allotments:	s. 88.
Statutory meetings;	s. 65.
The particulars as to directors and mortgage debt and the statement in the form of a balance sheet in the annual summary;	s. 26.
The appointment and remuneration, and powers and duties, of auditors;	ss. 112, 113.
Obligations of companies where no prospectus is issued;	s. 82.
Registration of mortgages and charges in England and Ireland;	s. 93.
Filing of accounts of receiver and manager;	s. 95.
Notice by liquidator in voluntary winding up of his appointment;	s. 187.
Rights of creditors in a voluntary winding up;	s. 188.
Requirements as to companies established outside the United Kingdom; and	s. 274.
Annual report by Board of Trade.	s. 283.

(*r*) See p. 268, *ante*.

SIXTH SCHEDULE.

PART I.

Section 286.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title of Act.	Extent of Repeal.
25 & 26 Vict. c. 89.	The Companies Act, 1862.	The whole Act.
27 Vict. c. 19.	The Companies Seals Act, 1864.	The whole Act.
30 & 31 Vict. c. 131.	The Companies Act, 1867.	The whole Act.
32 & 33 Vict. c. 19.	The Stannaries Act, 1869.	Sections twenty-five, twenty-six, and thirty-four.
33 & 34 Vict. c. 104.	The Joint Stock Companies Arrangement Act, 1870.	The whole Act.
37 & 38 Vict. c. 94.	Conveyancing (Scotland) Act, 1874.	Section fifty-six.
38 & 39 Vict. c. 77.	The Supreme Court of Judicature Act, 1875.	Section ten, so far as relates to the winding up of companies.
40 & 41 Vict. c. 26.	The Companies Act, 1877.	The whole Act.
40 & 41 Vict. c. 57.	The Supreme Court of Judicature (Ireland) Act, 1877.	Subsection (1) of section twenty-eight, so far relates to the winding up of companies.
42 & 43 Vict. c. 76.	The Companies Act, 1879.	The whole Act.
43 Vict. c. 19.	The Companies Act, 1880.	The whole Act.
46 & 47 Vict. c. 30.	The Companies (Colonial Registers) Act, 1883.	The whole Act.
49 Vict. c. 23.	The Companies Act, 1886.	The whole Act.
50 & 51 Vict. c. 43.	The Stannaries Act, 1887.	Sections nine and ten; section thirteen from "Upon the winding up" to the end of the section (being paragraph (2)); and section thirty-one.

Session and Chapter.	Short Title of Act.	Extent of Repeal.
50 & 51 Vict. c. 47.	The Trustee Savings Banks Act, 1887.	Section three.
51 & 52 Vict. c. 62.	The Preferential Payments in Bankruptcy Act, 1888.	Sections one, two, and three, so far as they relate to companies.
52 & 53 Vict. c. 42.	The Revenue Act, 1889.	Section eighteen.
52 & 53 Vict. c. 60.	The Preferential Payments in Bankruptcy (Ireland) Act, 1889.	Section four, so far as relates to companies.
53 & 54 Vict. c. 62.	The Companies (Memorandum of Association) Act, 1890.	The whole Act.
53 & 54 Vict. c. 63.	The Companies (Winding up) Act, 1890.	The whole Act.
53 & 54 Vict. c. 64.	The Directors Liability Act, 1890.	The whole Act.
56 & 57 Vict. c. 58.	The Companies (Winding up) Act, 1893.	The whole Act.
60 & 61 Vict. c. 19.	The Preferential Payments in Bankruptcy Amendment Act, 1897.	The whole Act.
61 & 62 Vict. c. 26.	The Companies Act, 1898.	The whole Act.
63 & 64 Vict. c. 48.	The Companies Act, 1900.	The whole Act.
7 Edw. 7, c. 24.	The Limited Partnerships Act, 1907.	Subsection (4) of section six.
7 Edw. 7, c. 50.	The Companies Act, 1907.	The whole Act.
8 Edw. 7, c. 12.	The Companies Act, 1908.	The whole Act.

Part II.

AN ACT TO REGULATE JOINT STOCK BANKS IN ENGLAND (7 & 8 VICT. c. 113), s. 47. Section 286 (*s*).

Existing companies to have the

Every company of more than six persons established on the sixth day of May one thousand eight hundred

(*s*) See p. 271, *ante*.

powers of suing and being sued.

and forty-four, for the purpose of carrying on the trade or business of bankers within the distance of sixty-five miles from London, and not within the provisions of the Act passed in the session of the seventh and eighth years of Queen Victoria, chapter one hundred and thirteen, intituled "An Act to regulate Joint Stock Banks in England," shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such co-partnership as the nominal plaintiff, petitioner, or defendant on behalf of such co-partnership; and all judgments, decrees, and orders made and obtained in any such suit may be enforced in like manner as is provided with respect to such companies carrying on the said trade or business at any place in England exceeding the distance of sixty-five miles from London under the provisions of the Country Bankers Act, 1826, provided that such first-mentioned company shall make out and deliver from time to time to the Commissioners of Inland Revenue the several accounts or returns required by the last-mentioned Act, and all the provisions of the last-recited Act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such first-mentioned companies as if they had been originally included in the provisions of the last-recited Act.

THE JOINT STOCK BANKING COMPANIES ACT, 1857.

PART OF S. 12.

Power to form banking partnerships of ten persons.

Notwithstanding anything contained in any Act passed in the session holden in the seventh and eighth years of Queen Victoria, chapter one hundred and thirteen, and intituled "An Act to regulate Joint Stock Banks in England," or in any other Act, it shall be lawful for any number of persons, not exceeding ten, to carry on in partnership the business of banking, in the same manner and upon the same conditions in all respects as any company of not more than six persons could before the passing of the Joint Stock Banking Companies Act, 1857, have carried on such business.

PART III.

COMPARATIVE TABLE OF OLD AND NEW ACTS.

SHOWING WHERE THE RE-ENACTED PROVISIONS OF REPEALED STATUTES APPEAR IN THE CONSOLIDATION ACT.

COMPANIES ACT, 1862 (25 & 26 Vict. c. 89).

Sections of Act of 1862.	Subject Matter.	Sections of Consolidation Act.
1, 2	Short title; commencement . .	—
3	Definition of insurance company . .	108 (5)
4	Prohibition of partnerships exceeding certain number	1
5	Divisions of Act	—
6	Mode of forming company . . .	2
7	Mode of limiting liability of members .	2
8	Memorandum of company limited by shares	3
9	Memorandum of company limited by guarantee	4
10	Memorandum of unlimited company .	5
11	Stamp, signature, and effect of memorandum	6, 14 (1)
12	Alteration of memorandum . . .	7, 41 (1)
13	Change of name	8
14	Articles of association	10, 12
15	Application of Table A. . . .	11
16	Stamp, signature, and effect of articles .	12, 14
17	Registration of memorandum and articles; fees	15, 244
18	Effect of registration	16
19	Copies of memorandum and articles for members	18
20	Prohibition against identity of names .	8
21	Restriction on certain companies holding land	19

Sections of Act of 1862.	Subject Matter.	Sections of Consolidation Act.
22	Nature of shares	22
23	Definition of "member"	24
24	Transfer by personal representative	29
25	Register of members	25
26	Annual list of members	26
27	Penalty on default in forwarding list and summary	26 (4), (5)
28	Notice of consolidation or conversion of capital into stock	42
29	Effect of conversion of shares into stock	43
30	Entry of trusts on register	27
31	Certificate of shares or stock	23
32	Inspection of register	30
33	Power to close register	31
34	Notice of increase of capital and of members to registrar	44
35	Rectification of register	32
36	Notice to registrar of rectification of register	32 (4)
37	Register to be evidence	33
38	Liability of present and past members	124
39	Registered office	62
40	Notice of situation of office	62 (2)
41	Publication of name by limited company	63 (1)
42	Penalty on non-publication of name	63 (2), (3)
43	Register of mortgages	100
44	Certain companies to publish statement in schedule	108
45	List of directors to be sent to registrar	75 (1)
46	Penalty on default as to list of directors	75 (2)
47	Promissory notes and bills of exchange	77
48	Prohibition of business with less than seven members	115
49	Annual general meeting	64
50	Power to alter regulations by special resolution	13
51	Definition of special resolution	69
52	Provision where no regulations as to meetings	67
53	Registration of special resolutions	70
54	Copies of special resolutions	70
55	Execution of deeds abroad	78
56	Examination of affairs of company by inspectors	109 (1)
57	Evidence on application for inspection	109 (2)
58	Inspection of books	109 (3)—(5)
59	Result of examination	109 (6), (7)

Sections of Act of 1862.	Subject Matter.	Sections of Consolidation Act.
60	Power of company to appoint inspectors	110
61	Report of inspectors to be evidence	111
62	Service of notices and other documents on company	116
63	Service by post	—
64	Authentication of notices by company	117
65	Recovery of penalties	276
66	Application of penalties	277
67	Evidence of proceedings at meetings	71, 74, 149 (10)
68	Jurisdiction of Stannaries Court	280
69	Costs in actions by certain limited company	278
70	Declaration in action against members	—
71	Use and alteration of forms	118
72, 73	Arbitration	119
74	Meaning of contributory	124
75	Nature of liability of contributory	125, 127
76	Contributories in case of death	126
77	Contributories in case of bankruptcy	127
78	Contributories in case of marriage	128
79	Circumstances in which company may be wound up by court	129
80	Company when deemed unable to pay its debts	130
81	Definition of court	131, 134, 135, 285
82	Application to court by petition	137, 138
83	Powers of court in chambers, &c.	—
84	Commencement of winding up	139
85	Power to grant injunction	140, 149 (2), (3)
86	Powers of court on hearing petition	141
87	Actions to be stayed after winding-up order	142
88	Copy of winding-up order to be sent to registrar	143
89	Power of court to stay winding up	144
90	Effect of order on share capital of company limited by guarantee	123 (3), 125
91	Court may have regard to wishes of creditors or contributories	145, 219
92, 93, 94	Appointment, resignation, style, &c., of official liquidator	149, 150
95	Powers of liquidator	151
96	Discretion of liquidator	151

Sections of Act of 1862.	Subject Matter.	Sections of Consolidation Act.
97	Appointment of solicitor to liquidator	151 (1) (*d*), (4)
98	Settlement of list of contributories and collection of assets	163
99	Representative contributories	126 (2), 163
100	Power of court to require delivery of property	164
101	Power to order payment of debts by contributory	165
102	Power to make calls	166
103, 104	Payment into bank; account with court	167
105	Default of representative contributory	126 (3)
106	Order of court, conclusive evidence	168
107	Exclusion of creditors not proving in time	169
108	Proceedings in Stannaries Court on proof of debts	—
109	Adjustment of rights of contributories	170
110	Court may order costs	171
111, 112, 113	Dissolution of company	172
114	Petition to be lis pendens	—
115	Power of court to summon persons suspected of having property of company	174
116	Special provision as to Stannaries Court	—
117	Examination of parties by court	174 (2)
118	Power to arrest absconding contributory	176
119	Powers of court cumulative	177
120	Power to enforce orders	178
121	Orders on Scotch contributories to pay calls	179
122, 123	Enforcement of orders throughout United Kingdom	180
124	Appeals from orders	181
125	Judicial notice to be taken of official signatures	225
126	Special commissioners for taking evidence	226
127	Examination of persons in Scotland	227
128	Affidavits	228
129	Circumstances of voluntary winding up	69, 182
130	Commencement of voluntary winding up	183
131	Effect of voluntary winding up on status of company	184, 205 (1)

Sections of Act of 1862.	Subject Matter.	Sections of Consolidation Act.
132	Notice of resolution to wind up voluntarily	185, 285
133	Consequences of voluntary winding up	186
134	Effect on share capital of company limited by guarantee	123 (3), 125
135	Delegation to creditors of power to appoint liquidators	190
136, 137	Arrangement when binding on creditors; appeal to court	191
138	Power to apply to court	193
139	Power of liquidator to call general meeting	194
140	Power to fill vacancy in office of liquidator	189
141	Power of court to appoint liquidator	187 (viii), (ix)
142	Liquidators to make up accounts on conclusion of winding up	195 (1), (2)
143	Liquidators to make return to registrar	195 (3), (4)
144	Costs of voluntary liquidation	196
145	Saving for rights of creditors	197
146	Power of court to adopt proceedings	198
147	Power to order winding up subject to supervision	199
148	Petition for supervision order	200
149	Court may regard wishes of creditors or contributories	201, 219
150	Power of court to appoint additional liquidators	202
151	Effect of surpervision order	203
152	Appointment of voluntary liquidator as official liquidator	204
153	Avoidance of certain dispositions	205 (2)
154	Company's books to be evidence	220
155	Disposal of books, &c., of company	222
156	Inspection of books	221
157	Power of assignee to sue	—
158	Debts of all descriptions to be proved	206
159	General scheme of liquidation may be sanctioned	214
160	Power to compromise with contributories	
161, 162	Power of liquidator to accept shares on sale of property of company; mode of determining price	192
163	Avoidance of certain attachments, &c.	211
164	Fraudulent preference	210

Sections of Act of 1862.	Subject Matter.	Sections of Consolidation Act.
165	Power of court to assess damages against delinquent directors, &c.	215
166	Falsification of books	216
167, 168	Prosecution of delinquent directors, &c.	217
169	Perjury	218
170	Rules by Lord Chancellor	—
171	Rules of Court of Session: powers of liquidator	151 (6), 238
172	Rules by Stannaries Court	238
173	Rules by Lord Chancellor in Ireland	238
174	Registration office	15, 243, 289
175	"Joint Stock Companies Acts" defined	285
176	Application of Act to companies formed under Joint Stock Companies Acts	245
177	Application of Act to companies registered under Joint Stock Companies Acts	246
178	Transfer of shares in companies registered under Joint Stock Companies Acts	248
179	Registration of existing companies	249 (2), (3)
180	Companies capable of being registered	249 (1), (4)
181	Definition of joint stock company	250
182	Proviso as to banking company	—
183	Requirements for registration	252
184	Requirements in case of company not joint stock company	253
185	Case of company with stock instead of shares	252
186	Authentication of statements	254
187	Registrar may require evidence as to nature of company	255
188	Notice to customers of banking company registering with limited liability	256
189	Exemption from fees	257
190	Addition of "limited" to name	258
191	Certificate of registration of existing companies	259
192	Certificate to be evidence of compliance with Act	—
193	Transfer of property on registration	260
194	Saving for existing obligations	261
195	Continuation of existing actions	262
196	Effect of registration	263
197	Power of court to restrain further proceedings	265
198	Stay of actions, &c., against contributory on winding-up order	266

Sections of Act of 1862.	Subject Matter.	Sections of Consolidation Act.
199	Winding up of unregistered companies	267, 268
200	Contributories in winding up of unregistered companies . . .	269
201	Power of court to restrain actions, &c. on presentation of winding-up petition	270
202	Actions stayed on winding-up order .	271
203	Directions as to property in certain cases	272
204	Provisions cumulative	273

COMPANIES SEALS ACT, 1864 (27 Vict. c. 19).

Sections of Act of 1864.	Subject Matter.	Section of Consolidation Act.
1	Short title	—
2	Official seal for use out of United Kingdom	79
3	Agents to affix seal out of United Kingdom	
4	Duration of agent's authority . .	
5	Certifying date of affixing seal . .	
6	Restriction on exercise of powers. .	
7	Saving	—

THE COMPANIES ACT, 1867 (30 & 31 Vict. c. 131).

Sections of Act of 1867.	Subject Matter.	Sections of Consolidation Act.
1	Short title	—
2	Construction	—
3	Commencement	—
4	Directors with unlimited liability . .	60 (1)
5	Extent of liability	123 (2)
6	Set off.	165 (2)
7	Notice of unlimited liability on election	60 (2), (3)
8	Provision for existing companies . .	61
9	Power to reduce capital . . .	46, 51

Sections of Act of 1867.	Subject Matter.	Sections of Consolidation Act.
10	Addition to name of "and reduced"	48
11	Order confirming reduction	47, 50
12	Definition of court; costs	47, 50, 285
13	Objecting creditors	49
14	Power to dispense with consent of creditors	
15	Registration of order confirming reduction and of minute	51
16	Minute to be part of memorandum of association	52, 53
17	Saving rights of creditors ignorant of proceedings	53
18	Minute to be embodied in copies of memorandum	52
19	Penalty on concealing name of creditor	54
20	Power to make rules	238
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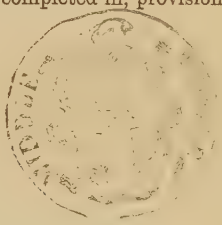

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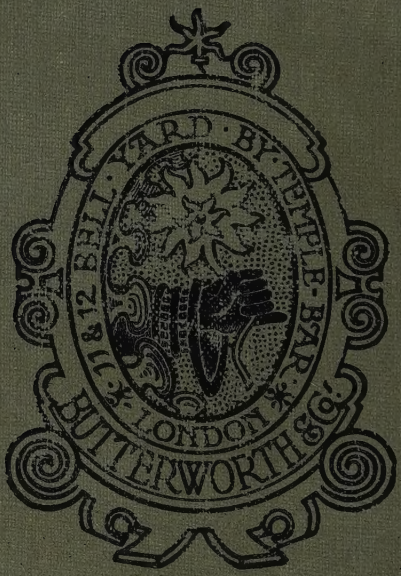

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